118-46

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 225.

THE HEIRS OF JOHN F. BENJAMIN, DECEASED,
APPELLANTS,

vs.

CHARLES L. DUBOIS, ADMINISTRATOR OF GUY H.
SCHLEY, DECEASED, (FORMERLY GUY H. ALLEN.)

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MAY 7, 1883.

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Authentication of Record.

Clerk's Certificate.

Clerk's Office,
Supreme Court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 7th day of May, 1883.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, Jr., *Assistant Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 7th day of May, 1883.

D. K. CARTTER, [seal.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 7th day of May, 1883.

[Seal of the Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, Jr., *Assistant Clerk.*

1

Petition of George Truesdell.

In the Supreme Court of the District of Columbia. Special Term.
Probate Jurisdiction.

In the Matter of the Estate of John Forbes Benjamin, Deceased.

To the supreme court of the District of Columbia, sitting in special term, probate jurisdiction:

The petition of George Truesdell respectfully represents—

First. That he is a resident of Washington city, in the District of Columbia, and a citizen of the United States.

Second. That heretofore, to wit, on the 8th day of March last past one John Forbes Benjamin departed this life in said city of Washington, having first executed a last will and testament in due form

of law to pass both real and personal estate, bearing date the 7th
day of March, 1877, and whereby he appointed your petitioner his
executor to wind up his business in the District of Columbia,
2 and one Joshua M. Ennis, of Shelbyville, in the State of Mis-
souri, the executor of said will so far as his, the said testator's,
property in the State of Missouri is concerned.

Third. That said deceased at the time of his death was domiciled in the town of Shelbina, county of Shelby, in the State of Missouri; that for a number of years prior to his death he was a resident of and doing business in the said city of Washington, and at the date of his decease he was a partner in the firm of Bigelow & Benjamin, doing business as bankers and brokers in said city of Washington; and at the time of his death was possessed of a considerable personal estate, consisting in bonds, stocks, promissory notes, choses in action, money, and other personal effects, of the estimated value of about $50,000, then and now within the jurisdiction of this court.

Fourth. That subsequent to the death of said deceased his said last
will was duly forwarded to the said county of Shelby, and in due
course of proceeding and law was duly admitted to probate
3 and record in the probate court for said county on or about
the 7th day of May, A. D. 1877, all of which will more fully
appear by a duly certified copy of said will and the proofs and probate thereof filed herewith as a part of this petition and marked "Exhibit G. T., No. 1."

"Exhibit G. T., No. 1."

Know all men by these presents that I, John Forbes Benjamin' of the town of Shelbina, county of Shelby, and State of Missouri, being now sound of mind, but conscious of the fact that I have but a few days to live, do make, publish, and declare the following to be my last will and testament, thereby revoking all wills and codicils heretofore made by me.

1st. I give and bequeath the following specific legacies:

To my good friend Charles M. King, of Shelbina, Missouri, my law library and furniture, or all that portion of the same now in use by him, and my gold-headed cane.

I give to George C. B. Rowan, of Washington, D. C., who
4 has given me so much kind care and attention during my
sickness, one hundred dollars ($100.00).

To my beloved wife, Diana, all my property of every description owned or possessed by me in the State of Missouri; also twelve thousand dollars in District of Columbia six per cent. gold bonds. I also give her a deed of trust loan of four thousand dollars made to John G. Waters, and a note for two thousand dollars of William Ridges, of Shelbina, Missouri, which I hereby direct to be forwarded to her at Shelbina, Missouri.

I give and bequeath to my adopted daughter, Mrs. Guy H. Allen, wife of James M. Allen, late of Cleveland, Ohio, all my interest in the partnership of Bigelow & Benjamin, and all debts which may

be owing to me by persons in the District of Columbia, and all the real estate owned by me in the District of Columbia. She is now very ill, and may not survive me many days, and perhaps
5 not at all; in either event I give and bequeath the part given to her to her sister, Mrs. Minnie Hammond, of Cumberland, Maryland, wife of Eugene Hammond, of Cumberland, Maryland.

My remains after death here to be suitably but not extravagantly cared for by an undertaker, and the same forwarded to Shelbina, Missouri, for such cemeterial disposition as may be had there. I leave it all to the discretion of my wife aforesaid.

I have long professed faith in the Lord Jesus Christ before men as the Son of God. Into His hands I commit my spirit.

I nominate and appoint my friend, Joshua M. Ennis, of Shelbyville, Missouri, the executor of this my last will and testament, so far as my property in the State of Missouri is concerned, and appoint George Truesdell to wind up my business in the District of Columbia, so far as will not interfere with the rights of Otis Bigelow, my surviving partner.

6 Subscribed by my own hand. Done in the city of Washington, in the District of Columbia, on the seventh day of March, A. D. 1877.

JOHN FORBES BENJAMIN.

Subscribed by us as witnesses in the presence of each other, and in the presence of and at the request of the testator, who declared to us that the foregoing was his last will and testament, the testator being known to each of us to be the party signing as such.

J. H. THOMPSON, M. D.
G. L. MAGRUDER, M. D.
OTIS BIGELOW.
GEO. TRUESDELL.

7 THE STATE OF MISSOURI:

To any judge or justice of the peace, or any mayor or chief magistrate of any city in the District of Columbia, U. S., Greeting:

Know ye that, reposing confidence it your ability, we do hereby empower you to cause to come before you, at a time and place to be by you appointed, J. H. Thompson, G. L. Magruder, Otis Bigelow, & Geo. Truesdall, attesting witnesses to the annexed instrument of writing, purporting to be the last will and testament of John Forbes Benjamin, deceased, and the said witnesses to examine on oath touching their knowledge of the execution of said instrument in writing, and of the condition of mind of the said John Forbes Benjamin at the time of the publication of said instrument of writing. The examination of the said parties as witnesses aforesaid thus taken you will reduce to writing and cause them to subscribe the same, and the examination thus taken and subscribed you will certify to the clerk of our said probate court within and for the county of Shelby, State of Missouri, under your hand.

8 Witness Charles H. Myers, judge & *ex-officio* clerk of our said probate court within and for the county of Shelby and

State of Missouri, with the seal of our said court hereto affixed, at the town of Shelbyville, in said county of Shelby, this 16th day of April, A. D. 1877.

[Probate Court Seal, Shelby Co., Mo.]

CHARLES H. MYERS,
Judge & ex-officio Clerk of Probate.

9 *Proof of Will.*

DISTRICT OF COLUMBIA,
County of Washington, } *ss:*

In Justice's Court.

Be it remembered that on this the thirtieth day of April, A. D. 1877, before me, Sam'l C. Mills, a justice of the peace in and for the county and district aforesaid, personally appeared J. Harry Thompson, G. L. Magruder, Otis Bigelow, who are the subscribing witnesses to the annexed will of John Forbes Benjamin, deceased, and, being by me first duly sworn, depose and say that the said John Forbes Benjamin, the testator, subscribed the same in their presence and published and declared said will or instrument of writing to be his last will and testament, and that at the time of signing the same he, the said testator, was of sound and disposing mind and more than twenty-one years of age; and that said deponent attested said will as witnesses thereto by subscribing their names to the
10 same in the presence of the testator and of each other and at the request of the said testator.

J. H. THOMPSON, M. D.
G. L. MAGRUDER, M. D.
OTIS BIGELOW. [SEAL.]

Sworn to and subscribed before me, the subscriber, a justice of the peace in and for the county of Washington and District of Columbia, this thirtieth day of April, A. D. 1877.

Fee	5 00
Certif.	50
	5 50

SAM'L C MILLS, [SEAL.]
Justice of the Peace for the County of Washington and District of Columbia.

CLERK'S OFFICE OF THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA,

DISTRICT OF COLUMBIA, *ss:*

I, R. J. Meigs, clerk of the said court, do hereby certify that Samuel C. Mills, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon
11 written, was at the time of taking such proof or acknowledgment a justice of the peace in and for the said district, dwell-

ing therein, commissioned, sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of said Samuel C. Mills, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this District.

In testimony whereof I have hereunto set my name and affixed the seal of said court this 1st day of May, A. D. 1877.

[Seal of Supreme Court of District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS,
Assistant Clerk.

12 STATE OF MISSOURI, } *ss:*
County of Shelby, }

In the Probate Court.

I, Charles H. Myers, judge & *ex-officio* clerk of the probate court of Shelby county, State of Missouri, having examined the foregoing instrument, purporting to be the last will of John Forbes Benjamin, deceased, and signed by said John Forbes Benjamin, and having examined the testimony of J. H. Thompson, G. L. Magruder, and Otis Bigelow, subscribing witnesses thereto, in relation to the execution of the same, do declare and adjudge said instrument to be the last will and testament of the said John Forbes Benjamin, deceased, late of Shelby county, Missouri.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Shelbyville, this 7th day of May, 1877.

[Probate Court Seal of Shelby Co., Mo.]

CHARLES H. MYERS,
Judge & ex-officio Cl'k of the Probate Court.

13 STATE OF MISSOURI, } *ss:*
Shelby County, }

In Probate Court.

I, Charles H. Myers, clerk of probate court within and for the county of Shelby and State of Missouri, do hereby certify that the within and foregoing is a true and perfect copy of the last will and testament of John Forbes Benjamin, deceased, as the original thereof appears on file in my office, together with copies of the commission to prove said will, the proof of said will and the certificates thereto attached, and also of the certificate of probate of said will.

In witness whereof I have hereunto set my hand as clerk of said court and affixed the seal of said court, at office in Shelbyville, this sixteenth day of May, A. D. 1877.

[SEAL.] CHARLES H. MYERS,
Clerk of Probate Court.

14 STATE OF MISSOURI, } *ss.:*
Shelby County, }

In Probate Court.

I, Charles H. Myers, judge of probate court within and for the county of Shelby aforesaid, do hereby certify that Charles H. Myers, whose name is subscribed to the foregoing certificate, was at the date of said certificate, and is now, clerk of the probate court within and for the county of Shelby and State of Missouri, and that the signature to said certificate is genuine, and that said instrument is executed according to the laws of this State.

In testimony whereof I have hereunto set my hand as judge of said probate court with the seal thereof attached, at office in Shelbyville, this sixteenth day of May, A. D. 1877.

[SEAL.] CHARLES H. MYERS,
Judge of Probate.

15 Fifth. That from the best information your petitioner can obtain, or of which he has any knowledge, the said will is the last will and testament of said deceased; that for the due administration of the personal property and effects of the said deceased within the District of Columbia, and the proper distribution thereof under the provisions of said will, it is necessary that the exemplified copy thereof as aforesaid be admitted to probate and record in this honorable court and recorded among the records thereof, and that letters testamentary or of administration of all the personal property of said deceased within the District of Columbia be granted to your petitioner.

And in consideration of the premises your petitioner prays—

First. That the exemplified copy of said will as aforesaid may be admitted to probate and record in this honorable court, and that letters testamentary or of administration of all the personal property and effects of the said deceased within the District of Columbia be granted to your petitioner. 16

Second. That your petitioner may have such other or further relief in the premises as the nature of the case may require.

And as in duty bound, &c., &c.

GEO. TRUESDELL.

EDWARDS & BARNARD,
Sol'r- for Petitioner.

DISTRICT OF COLUMBIA, *ss:*

George Truesdell on oath deposes and says: I have read the foregoing petition by me subscribed, and know the contents thereof; and that the facts therein stated of my own knowledge are true, and that those stated on information and belief I believe to be true.

GEO. TRUESDELL.

Sworn to and subscribed before me this 22d day of May, A. D. 1877.

[SEAL.] JAS. S. EDWARDS,
Notary Public.

17 *Decree Ordering Copy of Will, &c., be Recorded, &c.*

In the Supreme Court of the District of Columbia. Special Term Probate Jurisdiction.

In the Matter of the Estate of JOHN FORBES BENJAMIN, Deceased.

Upon consideration of the petition of George Truesdell, filed herein on the 22d day of May, 1877, it is, this 5th day of June, A. D. 1877, ordered, adjudged, and decreed that the copy of the will of the said John Forbes Benjamin, deceased, and of the proof and probate thereof from the probate court of Shelby county, in the State of Missouri, filed with said petition in this court on said 22d day of May, be, and the same is hereby, admitted to probate, and the same is hereby ordered to be recorded among the records of this court; and it is further ordered, adjudged, and decreed that letters testamentary of all the goods, chattels, and personal property of the said John Forbes Benjamin within the District of Columbia be, and the same are hereby, granted to the said George Truesdell upon his entering into bond, as required by law, in the penalty of seventy-five thousand dollars.

A. B. OLIN.

18 *Petition of Joshua M. Ennis.*

In the Supreme Court of the District of Columbia, Probate Jurisdiction, this 13th day of October, A. D. 1877.

JOSHUA M. ENNIS *vs.* GEORGE TRUESDELL.

To the supreme court of the District of Columbia, holding a probate court for said district:

The plaintiff complains as follows:

First. Complainant is a citizen of the United States residing in the State of Missouri, and brings this suit as the executor of the estate of John Forbes Benjamin, deceased.

Second. Defendant is a citizen of the United States residing in the District of Columbia, and is sued in the capacity hereinafter set forth.

Third. Complainant is the duly appointed and qualified executor of so much of the estate of the said John Forbes Benjamin as lies within the jurisdiction of the State of Missouri.

Fourth. That during the lifetime of the said John Forbes
19 Benjamin, deceased, one William Ridge, a resident of the city of Shelbina, in the State of Missouri, executed and delivered to said Benjamin his certain promissory note for $2,000, bearing date October 16th, 1876, payable to the said Benjamin one year after date, with interest at the rate of ten per centum per annum; that said Benjamin was at the time of his decease the owner of twenty (20) shares of one hundred —($100) each of the capital stock of the Valley National Bank of St. Louis, in the State of Missouri. For a further description of said note and said bank stock complainant prays that reference may be had to the papers on file and the records in the supreme court of said District, probate jurisdiction.

Fifth. Said defendant has said note and the certificate of said bank stock in his possession, claiming the custody thereof as executor of said Benjamin, deceased, with power to administer over so much of his personal estate as may be in said District of Columbia.

Sixth. Complainant, as the duly appointed and qualified
20 executor of said Benjamin's estate, demanded the delivery of said hereinbefore-described assets from said defendant before the beginning of this suit, on, to wit, the 11th day of October, 1877; that defendant refuses and neglects to deliver the same, or either of them, but still retains possession thereof.

Seventh. The proof of said will of said Benjamin, deceased, and the authority of complainant under said will, complainant prays a reference to the record of said will and the copies of complainant's letters testamentary on file in this court.

The complainant, therefore, prays as follows:

Prayers.

1st. That said defendant may be ordered to deliver said promissory note and said certificate of stock to complainant.

2nd. That complainant may have such other and further relief as to the court may seem meet.

ROBERT CHRISTY AND
E. D. F. BRADY,
Solicitors for Complainant.

I hereby waive the issue and service of process, and enter my appearance herein, and submit to the jurisdiction of the court in the premises.

21 *Answer of George Truesdell to Petition.*

In the Supreme Court of the District of Columbia.

In the — Estate of JOHN F. BENJAMIN, Deceased.

Answer of George Truesdell, executor of said estate, to the petition of Joshua M. Ennis filed therein.

For answer to said petition the said George Truesdell says:

1. He admits the facts alleged in said petition, as to the said note and certificate, to be correct as stated. And he says further that the same were in the possession of said decedent at the time of his death, in the city of Washington and District of Columbia, and that the same came into this respondent's hands as part of the assets of said estate in this District, and as such they were inventoried and reported to the court, and they are still in the possession of this respondent.

2. That he believes the other allegations contained in said
22 petition are substantially true as stated.

The premises considered, he therefore asks instructions from the court as to his duty in the matter, and submits the questions wholly to the court.

GEO. TRUESDELL,
Executor, &c.

EDWARDS & BARNARD,
Solicitors for Respondent.

23 *Order to Deliver Certain Securities to Plaintiff.*

In the Supreme Court of the District of Columbia, Probate Jurisdiction, this 16th day of October, A. D. 1877.

JOSHUA M. ENNIS, Executor, &c., *vs.* GEORGE TRUESDELL.

This cause came on to be heard at this term, and was argued by counsel; whereupon it is, this 16th day of October, A. D. 1877, ordered that said defendant deliver forthwith to said plaintiff or his attorneys, Robert Christy and E. D. F. Brady, the certain promissory note of William Ridge and the certificate of capital stock of the Valley National Bank of the City of St. Louis in said petition mentioned, upon receiving a receipt therefor.

A. B. OLIN.

24 In the Probate Court of Shelby County, Missouri. April Term, 1877. 7th day of April, 1877.

In the Matter of the Will of JOHN F. BENJAMIN, Dec'd.

Now at this day the instrument of writing purporting to be the last will and testament of John F. Benjamin, dec'd, together with the commission issued by this court and the proof as taken under said commission, are returned to the clerk of this court as required by law, and the court having examined the proofs so taken, it is hereby ordered and adjudged by the court that said will be admitted to probate and that a certificate of probate be granted thereon. And it is further ordered by the court that Joshua M. Ennis, the executor mentioned in said will, be, and he is hereby, confirmed as such executor, and before entering upon the duties of his office as such executor he is required to enter into bond to the State of Missouri in the sum of fifty thousand dollars, with two or more sufficient securities, residents of this county, conditioned for the faithful discharge of his duties according to law.

25 In the Probate Court of Shelby County, Missouri. April Term, 1877. 9th day of May, 1877.

Estate of JOHN F. BENJAMIN, Dec'd. J. M. ENNIS, Executor.

Now at this day comes Joshua M. Ennis, executor as aforesaid, and presents to the court his bond in the sum of fifty thousand dollars, as ordered by the court, which said bond, being duly considered and examined, is approved by the court and ordered to be filed and recorded.

And it is further ordered by the court that letters testamentary of the goods, chattels, and effects of the said John F. Benjamin, deceased, be issued to the said Joshua M. Ennis, executor aforesaid, and that Wm. A. Reid and Alex. McMurty be, and they are hereby, appointed witnesses to accompany and aid said executor in opening and examining the books and papers of said deceased, and in making an inventory of said estate.

26 STATE OF MISSOURI, } *ss:*
County of Shelby, }

I, Charles H. Myers, judge & *ex-officio* clerk of the probate court in and for said county, hereby certify that the above is a true copy of the original orders of appointment and approval in the cause therein named as the same appears from Order-book D, at pages 119 and 124, in my office.

Witness my hand as clerk and the seal of said court. Done at office, in Shelbyville, this 18th day of October, 1877.

[SEAL.] CHARLES H. MYERS,
Judge and ex-officio Clerk of Probate.

STATE OF MISSOURI, } *ss:*
County of Shelby, }

I, Charles H. Myers, judge of probate within and for said county and State, hereby certify that the above certificate of Charles H. Myers, as clerk of this court, is in due form of law.

Given under my hand this 18th day of October, A. D. 1877.

CHARLES H. MYERS,
Judge of Probate.

27 *Letters Testamentary.*

STATE OF MISSOURI, } *ss:*
County of Shelby, }

To all to whom these presents shall come, Greeting:

Know ye that the last will and testament of John Forbes Benjamin, deceased, late of Shelby county, Missouri, hath, in due form of law, been exhibited, proved, and recorded in the office of the clerk of the probate court of Shelby county, Missouri, a copy of which [is] hereunto annexed; and inasmuch as it appears that Joshua M. Ennis has been appointed executor in and by said last will and testament to execute the same, and to the end that the property of the said testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will and testament may be executed according to the request and instruction of the testator, we do hereby authorize him, the said Joshua M. Ennis, as such executor, to collect and secure all and singular the goods and chattels, rights, and credits which were of the said John Forbes Benjamin at the time of his death, in whosoever 28 hands or possession the same may be found, and to perform and fulfil all such duties as may be enjoined upon him by said last will and testament, so far as there shall be property and the law charge him, and in general to do and perform all other acts which are now or may be hereafter required of him by law.

In testimony whereof I, Charles H. Myers, judge and *ex-officio* clerk of the probate court in and for said State and county, have hereunto signed my name and affixed the seal of said court, at office in Shelbyville, this 9th day of May, A. D. 1877.

[L. S.] CHARLES H. MYERS,
Judge and ex-officio Clerk of the Probate Court.

29 STATE OF MISSOURI, *County of Shelby,* } *ss:*

I, Charles H. Myers, judge and *ex-officio* clerk of the probate court in and for said county, hereby certify that the above is a true copy of the original letters testamentary in the cause therein named as the same appears from Book B, at page 19, in my office.

Witness my hand as clerk and the seal of said court. Done at office, in Shelbyville, this 18th day of October, 1877.

CHARLES H. MYERS,
Judge and ex-officio Clerk of Probate.

STATE OF MISSOURI, *County of Shelby,* } *ss:*

I, Charles H. Myers, judge of probate within and for said county and State, hereby certify that the above certificate of Charles H. Myers, as clerk of this court, is in due form of law.

Given under my hand this 18th day of October, A. D. 1877.

CHARLES H. MYERS,
Judge of Probate.

30 *Statement of Facts and Notification.*

In the Supreme Court of the District of Columbia. Probate Court.
July 15th, 1878.

In the Matter of the Estate of BENJAMIN, Dec'd, Testator, &c.

To the honorable court possessing probate jurisdiction, and also to George Truesdell, to whom letters testamentary have been issued as one of the executors of the last will and testament of the above-named testator:

The undersigned, George H. Benjamin, Henry H. Benjamin, Louisa Wood and Luke C. Wood, her busband; Thursa Parks and Newton Parks, her husband; of the State of New York, ask to make and have filed in the said probate office the following statement of facts as a notification to the honorable court exercising probate jurisdiction, and to George Truesdell, one of the executors of the last will and testament of John F. Benjamin, dec'd, who died in March, 1877, in the District of Columbia, but
31 whose domicil was in Shelby county, State of Missouri, where he also was seized of property, personal and real, at the time of his death, and where his last supposed will and testament was probated:

Now the undersigned aforesaid desire, and do hereby make known to the court aforesaid, and to the said George Truesdell, executor aforesaid, to Mrs. Guy H. Allen, a pretended legatee under said will, Otis Bigelow, and all others to whom it may concern, that they are the heirs, and only heirs, at law of John F. Benjamin, dec'd; that the last will and testament of the said John F. Benjamin which was probated in Shelby county, State of Missouri, without notice to them, is null and void, as they have reason to believe, and so charge, from circumstances which have come to their knowledge; that the same was procured by fraud and under influence, and at a time so near his death that he was incompetent from excessive weakness and prostration by disease to make a will, and that by reason thereof the bequests made therein to certain legatees therein named, and
especially the name of Guy H. Allen and her sister, Minnie
32 Hammond; that proceedings have been instituted in the courts
of Missouri to set aside said will and to have the same declared inoperative, and untill said suit is determined the said executor, Truesdell, and the said Otis Bigelow, who has said bequests in his custody, are hereby duly notified not to pay the said legacies, or any part thereof, to the said Guy H. Allen, or any one else, leaving the question to the hon. probate court to determine to whom said money or legacies shall be paid.

July 16th, 1878.

GEORGE H. BENJAMIN,
HENRY H. BENJAMIN,
LOUISA WOOD,
Her husband, LUKE C. WOOD,
THURSA PARKS AND
Her husband, NEWTON PARKS,
By their agent and attorney, R. P. LOWE.

33 *Exceptions to the Return of Accounts.*

In the Supreme Court of the District of Columbia for Probate Business.

In re the Will of J. FORBES BENJAMIN, Deceased.

To the honorable justice holding said court:

Your petitioner- represents as follows:

First. That they are the attorneys of Joshua M. Ennis, executor of the estate of J. Forbes Benjamin, deceased.

Second. That by the provisions of the last will and testament of the said J. Forbes Benjamin, deceased, the testator gave and bequeathed, amongst other specific legacies, to his wife, Diana Benjamin, twelve thousand dollars in District of Columbia six per cent. gold bonds and a deed of trust loan of four thousand dollars made to John G. Waters, all of which the said testator specifically directed to be sent to her, the said Diana Benjamin, at Shelbina, Missouri.

That your petitioners have made repeated demands upon
34 George Truesdell, appointed executor by the supreme court
of this District, to deliver to us, as such attorneys, the afore-

said specific legacies for transmission to the said Joshua M. Ennis, executor.

Third. That upon the first declination of said Truesdell to deliver to us the legacies aforesaid we filed with the register of wills in this District a copy of said will, duly certified by the judge of the probate court of Shelby county, in the State of Missouri, showing that the said Joshua M. Ennis was nominated and appointed executor over so much of the estate of the testator as was to be administered in the State of Missouri, being the same will under which the said Truesdell himself claims. We also presented to the said Truesdell duly certified copies of the letters testamentary issued by the probate court of Shelby county, in the State of Missouri, to the said Joshua M. Ennis, yet, notwithstanding the aforesaid presentation of the full authority of the said Joshua M. Ennis, executor, to
35 receive the legacies aforesaid, the said Truesdell again de-
clined, and does still decline, to deliver up the same, and still retains them in his custody and possession in direct violation of the specific direction in the will aforesaid.

Fourth. That on Saturday, the 11th day of January, A. D. 1879, the said register of wills approved the return of accounts of said Truesdell, filed by him as executor in the supreme court of this District, and allowed a large commission, to wit, eight per centum, upon the amount of said return to said Truesdell without any opportunity whatever being given to any one to object thereto or to be heard therein.

Fifth. Your petitioners, as attorneys for said Joshua M. Ennis, executor, except to such allowance to said Truesdell, and most respectfully pray that said allowance of eight per centum made as hereinbefore stated be set aside, and the order made on the 11th day of January, A. D. 1879, approving said return of accounts and con-
36 firming said allowance, be rescinded for the following reasons:

1. Because said approval and allowance by said register of wills was made, and the said order confirming said allowance was taken, without the knowledge or consent of your petitioners and without any opportunity being giving your petitioners to examine or inspect said return of accounts or to object thereto.

2. Because said Truesdell is not entitled to any commissions whatever upon the proceeds of said Waters note, nor upon said $12,000.00 in District of Columbia gold bonds specifically directed by the will aforesaid to be sent to Missouri.

3. Because said return of accounts includes charges against the estate of the testator for counsel fees and other expenses incurred by said Truesdell outside of his duties as executor.

4. Because said commissions are largely excessive.

5. Because said Truesdell was never regularly or lawfully appointed such executor.

6. Because said will was never properly admitted to probate in the supreme court of this District, in this, that said testator,
37 J. Forbes Benjamin, made and executed said will in the Dis-
trict of Columbia, when he had his temporary domicile therein; that said testator remained continuously, from the time of

the execution of said will until his death, within said District of Columbia; that by the laws in force in said District of Columbia it was the duty of said Truesdell, being in possession of said will at and after the death of said testator, to have delivered said will to the register of wills of said District of Columbia, yet he transmitted the same to the State of Missouri, where it was admitted to probate.

Sec. 2, chap. 2, of the act of Maryland of 1798 provides as follows:

"It shall be lawful for any private person, in whose possession or custody a will or codicil shall be, after the death of the testator or testatrix, to open and read the same in the presence of any relatives of the deceased who may conveniently have notice thereof, and of other persons, and immediately thereafter to deliver the said will or codi-
cil to the register of wills, or the register or clerk of any office
38 in the county authorized to record wills, whose duty it shall
be to keep the same safe until proceedings may be had for proving the same in the said office, or until it be demanded by an executor or other person authorized to demand it, for the purpose of having it proved according to law."

7. Because said allowance by said register of wills is in other respects unlawful.

Sixth. Your petitioners furthermore represent that a suit to contest the validity of the will of said testator has been begun in the circuit court of Shelby county, in the State of Missouri, by George H. Benjamin *et al.*, which suit is still depending in said court.

Seventh. That sec. 14, chap. 3, of the act of Maryland of 1798, in force in this District, provides as follows:

"In case of delay, on account of the absence from the State of an executor, executrix, or executors named in a will, or of a contest relative to the right of administratien, or of a contested will or codicil,
or of the negligence of an executor or executrix named in the
39 will to take out letters testamentary, or the absence or negli-
gence of any person entitled to letters of administration, or on any other account, the orphans' court of the county wherein the will was proved or authenticated, or where letters of administration ought to be granted, may, at discretion, issue letters authorizing the collection and preservation of the goods of the deceased, and the returning an inventory thereof; and the said letters may, at [the] discretion of the court, be directed to one person only, or to several persons in case the goods and chattels and personal estate of the deceased shall be supposed to be in different counties."

That no collector, as provided in the aforesaid statute, has been appointed to collect and preserve the goods or chattels and personal estate of the testator in this District, notwithstanding said suit to contest the validity of said will has long since been instituted, and is still depending.

Thereupon your petitioners, as attorneys for the said Joshua M.
Ennis, executor of the estate of J. Forbes Benjamin, deceased,
40 pray as follows:

1. That the approval of said return of accounts by the register of wills be set aside.

2. That the allowance of eight per centum commissions by the register of wills be likewise set aside.

3. That the order of this honorable court made on the 11th day of January, A. D. 1879, confirming said approval and said allowance of commissions by the register of wills be rescinded.

4. That an order be made by your honorable court revoking the letters testamentary heretofore issued to the said Truesdell, the said will having never been lawfully admitted to probate in this District, and said letters testamentary having never been lawfully issued to said Truesdell.

5. That a collector be appointed to take charge of and preserve so much of the personal estate of the testator as is within
41 the District of Columbia, and not specifically directed by the will of said testator to be sent to the State of Missouri.

6. That an order be made directing the delivery to Joshua M. Ennis, executor, or his attorneys, the proceeds of said Waters loan and the $12,000.00 District of Columbia gold bonds, together with the interest collected therefrom.

ROBERT CHRISTY,
E. D. F. BRADY,
Atty's for Joshua M. Ennis, Executor

42 *Answer of George Trusdell to Petition of Robert Chisty.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

The answer of George Truesdell, executor of the will of John F. Benjamin within and for the District of Columbia, to the petition and exceptions filed herein by Robert Christy and E. D. F. Brady, as counsel for Joshua M. Ennis, executor of said will for the State of Missouri.

1. This respondent does not know whether the petitioners and exceptants are the attorneys for Joshua M. Ennis, executor, as stated in the first paragraph of their petition, or not, but presumes the said allegation to be true, and says that if they are so representing said Ennis as such representatives they have no legal right or standing in this court, either as petitioners or exceptants, so far as relates to any of the matters named in their said petition.

43 2. He admits the facts stated in the second paragraph, but denies that the said Joshua M. Ennis has any right whatever to receive the said bonds or note, even if this respondent could in any way be legally relieved from further responsibility in regard thereto; and further, he says that shortly after the death of his testator, John F. Benjamin, he is informed that the said Diana, his widow, to whom the said securities were specifically bequeathed, died at her home in Shelby county, Missouri, testate, appointing one John W. Miller her executor, who has duly qualified as such in the office of the probate court of said Shelby county, Missouri, and to whom,

as he is advised, all interest in said bonds and note has passed by operation of law, subject to claims of creditors and rights of heirs-at-law and distributees in the event of the said will of John F. Benjamin being set aside.

3. He admits that he has heard and understood that petitioners
did file copy of letters testamentary to said Ennis in the office
44 of the register of wills, as stated in the 3rd paragragh, but
he cannot say or admit that the same was duly certified, or
that duly certified copies were ever presented to him, but he admits the refusal on his part to deliver said bonds and note to said petitioners, and says that he still emphatically refuses and declines to deliver the same, for the reason that he claims they are not entitled to the same, and he would have no right to deliver them, as requested and demanded.

4. He admits the approval of his account by the register of wills, so far as the same could be done by that officer, as stated in the 4th paragraph, but denies that the allowance of a commission at eight per cent. was a large allowance for the work and labor performed in this estate, and says that such allowance was too small for a fair and adequate compensation to him, and that the same should have been fixed at ten per centum upon the assets coming to his hands,
as stated in his said account.
45 5. He submits that the said order and allowance should
not be set aside or rescinded, as demanded in the fifth paragraph, for any reasons therein alleged, and he says it is not true, as stated in said paragraph, that no opportunity was given said petitioners to examine or inspect the said account, because, he says, after filing the same, he met Robert Christy, one of said petitioners, and informed him of his action in the matter, and offered to hand him the retained copy of his said account for examination and inspection, but the said Christy declined to take the same, saying something about getting a certified copy from the register of wills.

He denies that he is not entitled to commissions upon the amount of said bonds and the said Waters note, which note was only $3,000 and interest, as shown in said account.

He denies that he has obtained credit or claimed credit in said account for anything outside of his duties, or not necessarily incurred
by him in the discharge of his duties, as such executor, as he
46 is and has been advised by counsel as to what his proper
duties are.

He denies that said commissions are excessive.

He denies that he was not regularly and lawfully appointed executor.

He denies that the said will was not properly and legally probated in the proper form, and that a duly certified copy was not properly filed and recorded in this court. On the contrary, he says that the domicil of said testator was in Missouri, and that the said will was sent to Missouri and duly proven in the probate court in said State, in accordance with advice of counsel, and that such was the proper and legal course to pursue in the premises. He denies that the allowance of his said account is in any respect unlawful.

6. He admits the facts stated in the 6th paragraph.

7th. He admits the law as stated in the 7th paragraph, but denies that the same has any application to this case.

47 And, having answered the said petition and exceptions, he asks that the same may be dismissed and overruled; and that the court may approve his said account and direct investment, as prayed in his petition filed with and attached to the said account; and that this respondent may have all other and proper relief to which he may be entitled in this matter.

GEO. TRUESDELL.

Subscribed and sworn to before me this 24th day of January, 1879.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

48 *Decree Fixing Commissions, &c.*

In the Supreme Court of the District of Columbia. In Probate Jurisdiction.

In the Matter of the Estate of John F. Benjamin.

The petition of George Truesdell, executor, filed herein on the 17th day of December, 1878, and his account filed therewith, and the petition and exceptions filed by Robert Christy and E. D. F. Brady, as attorney- for Joshua M. Ennis, filed herein January 17, 1879, and the answer of George Truesdell, executor thereto, having been heard, argued by counsel, and considered, it is, this 28th day of January, 1879, ordered, adjudged, and decreed that the said exceptions of the said Robert Christy and E. D. F. Brady as aforesaid be, and they are hereby, overruled; that the order passed herein on the 11th day of January, 1879, having been withheld from the records as though never signed or passed, is hereby cancelled; that the commissions to
the said executor be, and the same are hereby, fixed and ap-
49 proved at the rate of five (5) per centum upon the assets of
the said estate coming into his hands, as shown in the said report, to wit, $31,089.31, and that the same report be, and the same is hereby, approved and confirmed.

It is further ordered that the said executor be, and he is hereby, authorized and directed to invest the balance of cash in his hands, and which may hereafter come into his hands, as executor, or so much thereof as may be practicable, in the four per cent. registered bonds of the United States, and to hold the same for the benefit of said estate.

It is further ordered that the right of said Joshua M. Ennis to make further application herein for delivery to him of the assets claimed by him herein be, and the same is hereby, reserved.

By the court:

MacARTHUR, *Justice.*

50 *Petition of D. B. Hasbrouck.*

In the Supreme Court of the District of Columbia. Special Term.
Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

The petition of Daniel B. Hasbrouck, for himself and as attorney-in-fact for Elizabeth Hasbrouck and the children of Charles and Elizabeth Hasbrouck, viz., Mary Hasbrouck, James E. Hasbrouck, and Sarah Brown.

Your petitioner states that he is the brother of the late Diana Benjamin, who was the widow of John F. Benjamin, deceased, and that the said Elizabeth Hasbrouck and Mary Hasbrouck, James E. Hasbrouck, and Sarah Brown, whom he represent- as attorney, are some of the legatees, with himself, of the said Diana Benjamin; that the said Diana survived the said John F. Benjamin only a few weeks, having died on the 3rd day of June, 1877, testate, disposing by her will of all her property, including all that which she had
51 received or was to receive under the will of her said husband, to this petitioner and the parties represented by him, and other legatees named in the will.

That John W. Miller, of Shelby county, Missouri, was appointed her executor; that thereafter the heirs-at-law of the said John F. Benjamin filed a bill in the circuit court of Shelby county, Missouri, making this petitioner and the legatees of said Diana parties thereto, together with the legatees of the said John F. Benjamin and the executors of the said John F. and the said Diana.

That the purpose of such bill was to contest the will of the said John F. Benjamin; that issues have been made up in the said suit and testimony taken, and the said suit is still depending and undetermined.

He further says that, in his judgment, it is to the interest of the legatees claiming under the will of his deceased sister, Diana, that the specific legacies given to her by the will of her husband, to wit, the $12,000.00 in bonds of the District of Columbia and the
52 proceeds of the note of John G. Waters, of said District, now in the hands of George Truesdell, executor of the said will for the District of Columbia, should remain in his hands, invested, as he is informed they are, until the determination of the said litigation as to said will.

He therefore prays the court to make no order disposing of said legacies, or distributing the said legacies, or directing them to be sent to Joshua M. Ennis, executor in the State of Missouri of the will of John F. Benjamin, or to John W. Miller, executor of the will of said Diana, until the determination of said suit contesting the said will, or until such time as distribution can properly be made of the said estate in this court upon due notice to all parties in interest.

DANIEL B. HASBROUCK.

STATE OF NEW YORK, *City of New York:*

53 Daniel B. Hasbrouck, being duly sworn, says that he has read the above petition, and that the facts stated therein he believes to be true.

DANIEL B. HASBROUCK.

Subscribed and sworn to before me this seventh day of February, 1879.

EDMUND C. GAY,
Notary Public, C'y & Co., N. Y.

54 *Decree Denying Ennis' Motion.*

In the Supreme Court of the District of Columbia. In Special Term. Probate Jurisdiction.

In the Matter of JOSHUA M. ENNIS' Application, made in Estate of JOHN F. BENJAMIN, to deliver to him $12,000 District bonds, &c.

The application of Joshua M. Ennis, executor of the estate of John M. Benjamin for the State of Missouri, made in petition of Robert Christy and E. D. F. Brady, as counsel, for delivery of assets to them filed herein January 17, 1879, having been submitted upon briefs of the respective counsel and duly considered by the court:

It is, this 12th day of December, 1879, ordered, adjudged, and decreed that said application for the delivery to said applicant, or to his attorneys, of the $12,000 in District of Columbia gold bonds and the proceeds of the John G. Waters note described in said petition be, and the same is hereby, denied.

By the court:

MACARTHUR, *Justice.*

55 *Petition of Guy H. Allen and G. C. B. Rowan.*

In the Supreme Court of the District of Columbia.

In the Matter of the Estate of JOHN F. BENJAMIN, Deceased.

To the supreme court of the District of Columbia, in special term for probate business:

Your petitioners, Guy H. Allen and George C. B. Rowan, respectfully state:

1. That John Forbes Benjamin died in the city of Washington, in the District of Columbia, on the 8th day of March, 1877.
2. That on the day before his death he made his last will and testament.
3. That at the time of making said will, and at the time of the death of said testator, he had his domicil in the said city of Washington, and was engaged in business in said city as partner in the firm of Bigelow and Benjamin, bankers.
4. That said testator at the time of his death owned real estate 56 and personal property in the State of Missouri, and also owned real estate and personal property in this District.

5. That soon after the death of said testator George Truesdell, one of the executors named in said will, sent the same to the probate court for the county of Shelby, in the State of Missouri, and there filed depositions proving that it was executed in accordance with the laws of the State of Missouri and of the District of Columbia, and it was by said court duly admitted to probate.

6. That on the — day of May, 1877, said George Truesdell filed in this court duly certified copies of said will and depositions, and said will was admitted to probate in this court on the 5th day of June, 1877, and on the same day this court issued letters testamentary to said Truesdell, and he accepted the same, and duly qualified, and has since acted as executor as aforesaid.

7. That by said will said testator bequeathed to your petitioner,
George C. B. Rowan, the sum of one hundred dollars, and to
57 your petitioner, Guy H. Allen, his adopted daughter, all his
interest in the said partnership of Bigelow and Benjamin
and all debts due him from persons in the District of Columbia, and devised also to your petitioner, Guy H. Allen, all his real estate in this District.

8. That all the debts of said testator have been paid, and that said Truesdell, as executor, has now in his possession applicable to the purpose funds sufficient to pay in full said legacy to said Rowan and several thousand dollars belonging to the fund so specifically bequeathed to said Guy H. Allen.

9. That your petitioners have requested said Truesdell to pay to them respectively the funds so in his hands belonging to them, and that, while said Truesdell admits that said testator's domicil at the time of his death was in this District and believes that your petitioners are entitled to receive said funds, he is advised by his coun-
sel that he should be protected in making such payments by
58 an order of this court because of a certain paper, called a
caveat, filed in this court on the 17th day of July, 1878, by
R. P. Lowe, Esq., as attorney and agent for George H. Benjamin and others, who claim to be the heirs of said testator, in which paper it is suggested that the validity of said will is being contested by them in the circuit court of said county of Shelby, in the State of Missouri.

10. Your petitioners are advised and believe, and therefore aver, that, as said testator was at the time of his death domiciled in this district, this court and no other can rightfully decide the question whether or not his said last will and testament is valid, except in so far as it relates to real estate not situated in this District, and that the proceedings in Missouri referred to in said caveat furnish no excuse to said Truesdell for delay in paying to your petitioners their respective legacies.

11. That said will is in all respects a valid one, and that no good
reason exists for further delay in the payment of said legacies.
59 Wherefore your petitioners pray that said Truesdell may
be directed by this court to forthwith pay to said Rowan his
legacy in full, and to said Guy H. Allen so much of her said legacy as may be now in his possession, less his proper commissions and

expenses, and your petitioners ask for such other and further relief as to the court may seem meet.

GEORGE C. B. ROWAN.
GUY H. ALLEN.

I, on oath, say that I have read the foregoing petition by me signed; that the statements therein made of my own knowledge are true, and that those which are made upon information from others I believe to be true.

GEORGE C. B. ROWAN.
GUY H. ALLEN.

Subscribed and sworn to by George C. B. Rowan before me this fifth day of January, 1880.

[SEAL.] LEMUEL BURSLEY,
Notary Public.

60 Subscribed and sworn to before me, a notary public in and for the county of Allegany, in the State of Maryland, at the city of Cumberland, in said county, this eighth day of January, 1880.

Witness my hand and notarial seal.

[SEAL.] J. S. HUMBIRD,
Notary Public.

61 *Order Nisi as to Payment, &c.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN, Deceased.

Upon consideration of the petition of Guy H. Allen and George C. B. Rowan this day filed, averring that the testator above named was, at the time of his death, domiciled in the District of Columbia, and praying that George Truesdell, the executor of said estate, appointed by the court be directed to forthwith *to* pay to them their respective legacies under the will of said John F. Benjamin, dated March 7, 1877, notwithstanding the contest over the validity of said will in the courts of the State of Missouri, and upon the motion of A. S. Worthington, the solicitor for said petitioners, it is, this 9th day of January, 1880, ordered that the prayer of said petition shall be granted on Friday, the 23d day of January, 1880, unless cause to the contrary be then shown to the court: Provided, That a copy
62 of this order be served within four days from this date upon said Truesdell, or his solicitors; upon Robert Christy, Esq., solicitor for Joshua M. Ennis, executor, and upon R. P. Lowe, Esq., solicitor for George H. Benjamin and others claiming to be heirs of said John F. Benjamin: And provided also, That a copy of this order be published in the Law Reporter of this District twice before said 23d day of January.

JAMES, *Justice, &c.*

63 *Proof of Publication.*

WASHINGTON, D. C., *Jan'y 27th*, 1880.

Mr. A. S. Worthington, solicitor, to Washington Law Reporter, 631 F street, Dr.

Jan'y 12, 1880.—To pub. notice in the matter of the estate of J. F. Benjamin -- $5 65

Received paym't,

JOHN L. GINCK & CO.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

On this 27th day of January, A. D. 1880, personally appeared before me, the undersigned, a notary public in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is one of the publishers of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for two successive weeks, as follows: Jan'y 12th & 19th, 1880.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

[SEAL.] JAMES T. POWELL,
Notary Public.

64 *Advertisement.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Upon consideration of the petition of Guy H. Allen and George C. B. Rowan this day filed, averring that the testator above named was, at the time of his death, domiciled in the District of Columbia, and praying that George Truesdell, the executor of said estate appointed by this court, be directed to forthwith pay to them their respective legacies under the will of said John F. Benjamin, dated March 7, 1877, notwithstanding the contest over the validity of said will in the courts of the State of Missouri, and upon the motion of A. S. Worthington, the solicitor for said petitioners, it is, this 9th day of January, 1880, ordered that the prayer of said petitioners shall be granted on Friday, the 23rd day of January, 1880, unless cause to the contrary be then shown to the court: Provided, That a copy of this order be served within four days from this date
65 upon said Truesdell, or his solicitor; upon Robert Christy, Esq., solicitor for Joshua M. Ennis, executor, and upon R. P. Lowe, Esq., solicitor for George H. Benjamin and others claiming to be heirs of said John F. Benjamin: And provided also, That a copy of this order be published in the Law Reporter of this District twice before said 23d day of January.

JAMES, *Justice, &c.*

66 *Proof of Service.*

STATE OF MISSOURI, } ss:
County of Shelby, }

On this 14th day of January, 1880, personally appeared before me, a notary public within and for said county, William Copenhaver, who, being duly sworn, upon his oath says that he served a copy of the above notice upon John W. Miller, executor of Benjamin, deceased, on the 13th day of January, 1880, by delivering the same to him at Shelbina, in said county.

WILLIAM COPENHAVER.

Subscribed and sworn to before me this Jan. 14th, 1880.
Witness my hand and notarial seal.

[SEAL.] B. F. DOBYNS,
Notary Public for Shelby County, Missouri.

Service of copy of above order acknowledged this 10th day of January, 1880.

R. P. LOWE,
Att'y for G. H. Benjamin et al.
EDWARDS & BARNARD,
Att'y- for Geo. Truesdell.
ROBERT CHRISTY,
Sol. for Joshua M. Ennis, Ex'r.

67 *Petition for Citation on Geo. Truesdell.*

In the Supreme Court of the District of Columbia.

To the justice of said court, sitting in probate jurisdiction:

Your petitioners respectfully represent—

That George Truesdell, heretofore appointed by this honorable court executor of the estate of John Forbes Benjamin, deceased, filed his first account with said probate court, as such executor, on or about the 28th day of January, A. D. 1879.

That the time limited by law has long since elapsed within which the said Truesdell, as such executor, is required to file his second account.

Whereupon your petitioners pray that the usual citation in such cases may be issued requiring said Truesdell, as such executor, to file said second account, and for other orders proper in the premises.

ROBERT CHRISTY &
E. D. F. BRADY,
Attorneys for Joshua M. Ennis, Executor.

68 *Answer of G. Truesdell to Citation.*

In the Supreme Court of the District of Columbia. Special Term.
Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

George Truesdell, executor of said estate, in response to the citation issued and served upon him on the 16th of January, 1880, directing him to show cause why he does not file his second accoun*d* as executor herein, says:

First. Upon the filing of his first account it appeared to the court that there was litigation pending as to the validity of the will, and the court directed, in approving his first account, that the money, or so much *of* thereof in his hands as it should be practicable to invest, should be invested in Government bonds and held by him until the further [order] of the court.

That the said litigation over the said will has not yet been determined.

That the debts of the said estate have been paid, as he believes.

69 That he has now in his hands invested in bonds, under the said order of the court, $11,500.00 in United States four (4) per cent. bonds, and still holds the $12,000 in District of Columbia gold bonds.

That he is ready to render an account at any time the court shall require, but under the circumstances he is advised that it would be needless expense, as no distribution would be made until the litigation over the will was settled; and he is further advised that the petitioners, Messrs. Christy & Brady, as representatives of Joshua M. Ennis, executor of the estate in Missouri, *has* no interest whatever in the accounting of this respondent in this court or the distribution of the funds here, and that he has no right to call this respondent to account; but, if the court require and deems it best that an account shall be filed at this time, he is ready and willing to comply with any order that the court shall make in the premises; and inasmuch as there is now pending the petition of Guy H. Allen for final settlement and distribution, he is advised that it would be better for the interest of said estate to delay the re-
70 port until it is decided whether or not he can make a report and distribution of the funds now in hand, which he is anxious to do.

GEO. TRUESDELL.

Sworn to and subscribed before me this 23d day of January, A. D. 1880.

A. WEBSTER,
Register of Wills.

71 *Answer of G. Truesdell to Petition of Guy H. Allen.*

In the Supreme Court of the District of Columbia. Special Term for Orphans' Court Business.

In the Matter of the Estate of John F. Benjamin.

George Truesdell, executor of the estate of John F. Benjamin for the District of Columbia, answering the petition of Mrs. Guy H. Allen and George C. B. Rowan filed herein, asking payment of their legacies, says:

1 and 2. He admits the facts stated in the first and second paragraphs.

3. He admits that the said John F. Benjamin was engaged in business in this District as stated in the third paragraph, and that upon the facts now known by him he is advised and believes that the domicil of said testator was in this District as stated.

4. He admits that said testator owned property as stated
72 in the fourth paragraph, and says that the most valuable portion of his real estate was located in Shelby county, Missouri.

5. He admits that he sent the said will to Missouri for probate, as stated in the fifth paragraph, and says that he did so upon the advice of counsel and upon the belief then entertained by him that the said testator's legal domicil was there at the date of said will and death.

Further facts having since come to his knowledge, he is now advised thereon that the said testator's legal domicil was at that time the same as his actual domicil and residence, to wit, in the District of Columbia.

6, 7, and 8. He admits the facts stated in the sixth, seventh, and eighth paragraphs.

9. He admits the statement of fact made in the ninth paragraph.

10. As to the facts stated in the tenth para-ph, he admits the same, and says that he is advised that if the domicil of the testator
73 shall be established to have been in this District at the date of said will and of the testator's death, then that he would be justified in making payment of said legacies and settling and distributing the estate now held by him so far as the same has been administered, notwithstanding the suggestion filed in this court and cause by R. P. Lowe, Esq., as attorney for the heirs of said testator, in which it is suggested that the said will is being contested in the court in Shelby county, Missouri, because the said will has been duly admitted to probate and record by the decree of this court, passed herein June 5, 1877, and no steps have been taken to contest its validity in this forum.

11. He admits and avers that the said will is valid in all respects as stated in the eleventh paragraph, and he is ready and willing to make distribution and pay over the said legacies, so far as he can do so, whenever the court herein shall so order.

GEO. TRUESDELL.

Subscribed and sworn to before me this 23d day of January, 1880.

A. WEBSTER,
Reg. of Wills.

74 *Answer of John W. Miller, Ex'r. of Diana Benjamin, to Petition of Guy H. Allen.*

In the Supreme Court of the District of Columbia. Special Term for Orphans' Court Business.

In the Matter of Estate of JOHN F. BENJAMIN.

John W. Miller, the executor of Diana Benjamin's last will and testament, of Shelbina, Missouri, by Daniel B. Hasbrouck, his attorney-in-fact, appears herein, and, in answer to the petition of Guy H. Allen and George C. B. Rowan, filed herein January 9, 1880, asking for payment of their legacies, says:

1. Upon information and belief he admits the varions allegations in said petition relating to the residence, death, will, and condition of the estate of said John F. Benjamin, and he is advised that it is competent for this court to direct a payment of said legacies and also of the legacy made to Diana Benjamin, the wife of said testator, if it shall be determined that the legal domicil of said testator 75 at the time of his death was in this District, notwithstanding the suggestion or caveat filed in this court by George H. Benjamin and others suggesting the pending suit in Missouri for the contest of said will.

2. That as to the question of domicil this respondent does not undertake to state where the same was, and therefore neither admits or denies the allegations in respect thereto in said petition.

3. The respondent further says that Diana Benjamin, the wife of John F. Benjamin, died on or about June 3d, 1877, testate, and that her will was duly probated and recorded in the probate court of Shelby county, Missouri, and that this respondent is her duly qualified executor, a copy of said will and letters testamentary being now on file, as he is informed, with the papers of this cause in this court.

He therefore asks that payment may be made to him of the legacy or legacies made to said testatrix now in the hands of George 76 Truesdell, the executor for the District of Columbia, to wit, payment of the $12,000 in District of Columbia bonds, with interest, and the proceeds of the note of John G. Waters collected by him; and that this respondent may have such further relief in the premises as may be proper.

JOHN W. MILLER,
By DANIEL B HASBROUCK,
Att'y-in-Fact.

DISTRICT OF COLUMBIA, *ss:*

Daniel B. Hasbrouck swears that he is a brother of the deceased, Diana Benjamin, and a legatee under her will, and that he is authorized by a letter of attorney from said John W. Miller, which is annexed hereto, to appear herein; and he says that the facts stated in the above answer, so far as stated on personal knowledge, are true, and those stated on information he believes to be true.

DANIEL B. HASBROUCK.

Subscribed and sworn to before me this 23d day of January, 1880.

A. WEBSTER,
Reg. of Wills.

77 SHELBINA, MO., *Jan'y* 19, '80.

D. B. Hasbrouck, Esq.

DEAR SIR: Notice having been served on me as executor of the estate of Diana Benjamin that an application would be made in the supreme court of District of Columbia on the 23 day of January, 1880, for a distribution of the assets of the late John F. Benjamin, deceased, to certain legatees of the said John F. Benjamin, this, therefore, is to authorize you or your attorney to appear for me and in my name in the said proceeding before said court on the 23d day of January, 1880, or at any other time, and ask of said court that a distribution of the legacy made in the will of John F. Benjamin to Diana Benjamin be made to me as her executor, giving you full power to do all that I could if personally present in said court on the 23d day of January, 1880.

JOHN W. MILLER,
Executor of the Estate of Diana Benjamin, Dec'd.

78 *Answer of G. H. Benjamin to Petition.*

In the Supreme Court of the District of Columbia.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

The answer of Geo. H. Benjamin, one of the legal heirs of John F. Benjamin, dec'd, to the petition of Guy H. Allen and George C. B. Rowan, filed on the 9th day of Jan., 1880, on the filing of which the court made an order upon the motions of the counsel for the petitioners that the prayer thereof should be granted on the 23d day of the same, unless cause to the contrary be shown to the court.

This respondent answering said petition is willing to admit the facts alleged in the first, second, fourth, and fifth paragraphs thereof.

2. As to the third paragraph this respondent denies that the decedent at his death or before had his legal domicil in Washington, District of Columbia, but admits that he was temporarily residing in Washington, and engaged in the banking business with one Bigelow, his partner.

79 3. That the matters and things set out in the sixth and eighth paragraphs this respondent says *that* he is not sufficiently informed in respect thereto to admit or deny the same, and asks that the petitioners be required to prove the same.

4. Referring to the seventh paragraph this respondent admits that on the paper which the petitioners designate as a will the decedent bequeathed to the petitioners the property therein specified.

5. Touching the ninth paragraph this respondent admits the statement therein that his att'y, on or about the 17th of July, 1877, did file a caveat in the probate court of this District for and in be-

half of this respondent and others in effect warning this court, the administrators, and others to whom it may concern not to pay over to these petitioners or others any money, property, rights, or credits which might come into their custody from the estate of John F. Benjamin, dec'd, for the reason that the validity of the instrument which was denominated a will, and under which these
80 petitioners claim said property, money, rights, and credits, was
being contested in the circuit court of Shelby county, in the State of Missouri, and where said alleged will had been probated; and in addition thereto this respondent now further states that since the filing of said caveat there has been two trials on the validity of said alleged will in the State of Missouri without reaching a conclusion, for the reason that the jury in both instances failed to agree upon their verdict, still leaving the question at issue unsettled, to be tried again at the next term of the circuit court of the county aforesaid, to be held in the ensuing spring, at which time this respondent will be present, ready, and shall press a trial; and in this connection your respondent would further state that at the last trial of said cause the jury stood 9 to 3 for setting aside said supposed will, and he has just reason to believe but for the failure of a certain deposition to reach the court till after the trial had been entered upon, which excluded its consideration for that cause under the rules of the court, the verdict would have been for the plaintiffs in
81 the cause. In another trial the same will be available, when
a verdict against the will is confidently expected. Now what else is said in the paragraph under consideration this respondent is not sufficiently informed to admit or deny, and calls for proof if the same is deemed of any materiality.

6. As it respects the tenth and eleventh paragraphs it is again denied that the facts of the case fix the legal domicil of the decedent, at the date of his death, in the District of Columbia, but they do establish it to be in Missouri, where the decedent himself fixed his residence at the date of and in the instrument called his will, where he had long lived, without any permanent change of domicil; where his family was residing at his death in the old homestead; where he had large property, personal and real; where the paper styled his will was first probated by the procurement of the executor, Mr. Truesdell, named therein, and where its validity is now being tried in the courts of that State, the jurisdiction of which is ad-
82 mitted by the petitioner, Guy H. Allen, who appeared, plead,
and went to trial there, without objection to the jurisdiction of the court, and where the case is still pending for final adjudication. The impropriety therefore of this court ordering the executor, Mr. Truesdell, to pay over certain alleged legacies to the petitioners in advance of the decision which is to determine their right thereto is manifest.

If, irrespective of the question of domicil, we should concede (which we do not) that this court has concurrent jurisdictions with the courts in Missouri over the question of the validity of said will, because a part of the property has its sites here, still, inasmuch as the courts of Missouri have first obtained jurisdiction over this question, it would be against all the principles of State comity for this court to undertake to assert or interfere with the jurisdiction of the Missouri court.

For these reasons your respondent insists that the proposed order should be denied and the petitioners' application be dismissed at their costs.

G. H. BENJAMIN.

Subscribed and sworn before me Jan'y 23, 1880.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, Jr., *Ass't Clerk*.

83 *Order Referring Cause to Register to Take Depositions.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of John F. Benjamin.

Upon consideration of the petition of Guy H. Allen and George C. B. Rowan, filed in this court on the 9th day of January, 1880, and of the answers filed thereto by George Truesdell, executor, George H. Benjamin, and John W. Miller, executor of Diana Benjamin, and after argument therein by counsel for said petitioner and for said Truesdell, and by counsel for Joshua M. Ennis, executor, and by counsel for George H. Benjamin, Henry H. Benjamin, Louisa Wood, and Thurza Parks, it is, this 24th day of January, 1880, ordered that this cause be, and it is hereby, referred to the register of wills to take depositions in behalf of any or all the parties in interest as to the domicil of John F. Benjamin at the time of his death, said depositions to be taken within twenty-five days from this date; and it is further ordered that each of the parties in interest may take depositions on that subject of non-resident witnesses to be filed in court within said period of twenty-five days.

CH. P. JAMES, *Justice*.

Testimony Taken Before Amos Webster, Esq., Register of Wills.

84 In the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business.

In re Estate of John Forbes Benjamin.

January 28*th*, 1880.

Met pursuant to notice.

Present: A. S. Worthington, Esq., counsel for Mrs. Guy H. Allen and George Rowan; Robert Christy, Esq., counsel for Joshua M. Ennis, executor, and Job Barnard, Esq., counsel for George Truesdell, —— Miller, executors of Dianna Benjamin, and —— Hasbrook.

85 *Deposition of G. Truesdell.*

George Truesdell, sworn and examined on behalf of Mrs. Guy H. Allen, George Rowan, and Truesdell and Miller, executors.

By Mr. WORTHINGTON:

Q. Please state your name, age, residence, and occupation.

A. George Truesdell; 37 years of age; Washington, D. C. I am a real estate agent and note broker.

Q. How long have you resided here?

A. Continuously since the spring of 1872.

Q. Did you know the testator, John F. Benjamin?

A. I did.

(Mr. R. P. Lowe, counsel for Benjamin, entered the court at this point.)

Q. Were you present at his death?

A. I was not.

Q. Do you know where he died, and when? If so, tell it.

A. He died in a house on the south side of D street between Second and Third N. W., in this city, on the morning of the 8th March, 1877.

86 Q. How long before his death had you known him? And tell generally in what manner you were associated with him during his residence in Washington.

A. I first met him about the 1st September, 1874, when he came here and made arrangements to commence business with Otis Bigelow. My office was at that time in the same room with Mr. Bigelow, and when Gen. Benjamin commenced business here about a month later he came into that room and continued to occupy the same with Mr. Bigelow and myself from that time down to the time of his death.

Q. During that period were your relations with him intimate or otherwise?

A. To some extent they were intimate. We had daily conversations upon a variety of subjects during all of that time.

Q. During that period what portion of his time approximately did he pass in Washington and what portion did he pass outside of the District?

A. To the best of my recollection he passed all of his time
87 in Washington, with the exception of from two to four weeks
each year.

Q. During that period what, if anything, did he say to you in reference to where he proposed to reside; or what, if anything, did he say in reference to retaining or selling his homestead in Missouri or acquiring one here, or as to coming here? Please state in your own way and as nearly as possible in chronological order what, if anything, he said to you on the subject or what you heard him say to others.

(Objected to by Col. Christy as incompetent.)

(Mr. Barnard here objects to the appearance of counsel for Joshua M. Ennis, of Missouri, on the ground that there is no paper or answer filed on behalf of the said Ennis in this controversy; and, further, that the said Ennis has no interest whatsoever in this controversy.)

(Col. Christy (to the register) counsel for Joshua M. Ennis, executor, here moves the court, or register acting by authority of the court that the question made by counsel for Truesdell, executor, 88 be referred to the justice sitting in probate, and that the examination of witnesses be suspended until such question is heard and decided by the said justice.)

(Mr. WORTHINGTON: I object to this motion being considered at all. The court has referred this case to the register to take testimony, and I, representing three of the parties, think we ought to proceed with the examination.)

(It is here agreed between counsel upon the premises of counsel for Ennis, executor, that upon his filing his answer before the taking of the testimony is completed *that* so much of the foregoing objection by counsel for Truesdell as is based upon the omission to file said answer is withdrawn.)

The WITNESS: When he came here to engage in business I learned that he was coming here to live and would want to buy a house, and, being in the real estate business, soon after he came here I asked him if such was the case. I cannot recall definitely what his 89 reply was, but I took him to see a house belonging to David L. Morrison, on the corner of 11th street and L N. W., on the N. E. corner, and went through the house with him and Mr. Morrison. When we came away he told me the price was too high. Subsequently he talked with me about a house on the corner of Sixth and M streets N. W., belonging to William Stickney, and asked my opinion as to its value. At another time, while he was negotiating a trade of his house in Shelbina, Missouri, for a house belonging to Mrs. Schoolcraft on C street between Third and Fourth streets S. E. and a house on Q street, I think, between Fourteenth and Fifteenth, he asked my opinion as to the value of those houses.

Q. You speak of his wanting to sell his house in Missouri. Did he give any description of that house?

A. He had a photograph of that house in Missouri, and it was understood by myself and others in the real estate business that that house was for sale or exchange for Washington city property.

90 Q. Do you remember whether he gave that property any name?

A. Vesper Place, I believe he called it.

Q. Have you been in Missouri since his death, and have you seen his mansion?

A. Yes, sir.

Q. Was it the house he had the photograph of?

A. It is the house of which I saw the photograph exhibited by Gen. Benjamin.

Q. That is the house I understand he wants to exchange for property here?

A. Yes, sir; that is the house he wanted to sell or exchange for Washington city property. During this time, and before the time when I went to see persons relative to the sale or exchange of his house for property here, I heard considerable of the conversation upon that subject. I remember a Mr. Armes, a real estate agent,

went to see him a number of times in regard to exchanging his house
at Vesper Place for Gen. Sherman's house. I think this
91 was about the time that Gen. Sherman was ordered to St.
Louis, and it was understood that his house was for sale.
Armes finally induced Mr. Benjamin to go and see Gen. Sherman upon the subject, and when Benjamin returned to the office he remarked to me that "it was just as I expected; Gen. Sherman wants to sell, but does not want my property in Missouri." In conversing with him in regard to the Schoolcraft house on C street S. E. I asked him if he intended to occupy it himself. He told me that he did, and intended to live in it.

Q. Did you see that house?

A. I think I did.

Q. Can you give a general description of its size?

A. I do not think I went into the house, but I think I have seen it two or three times to the best of my recollection. It is a large
three-story brick of more than ordinary width, and the lot
92 extends from C street through to either North or South Carolina avenues.

Q. That is sufficient; I only wanted the size of the house.

A. I may say in regard to that exchange that the negotiations were made by Mr. Sweet, real estate agent in this city. He was frequently at the office on that business. I remember Sweet produced a paper one day, and said to Gen. Benjamin that Mrs. Schoolcraft wanted the contract in writing, and that he had prepared a contract which he would like him to sign. Gen. Benjamin examined the paper and signed it. He afterwards told me that he had made a contract with Mrs. Schoolcraft.

Q. Did he state what it was?

A. That it was for the exchange of his house "Vesper Place" for the house on C street, and I think the house on Q street. I cannot speak positively as to the Q-street house. I remember his asking
my opinion as to the value of the house on Q street. I think
93 it was included in that contract, but cannot say positively.
It is possible that he may have asked me as to the value of the Q-street house at another time.

By Mr. Barnard:

Q. Did you understand whether that contract was ever carried out?

A. I was told by Mr. Benjamin subsequently that Mrs. Schoolcraft was unable to carry out the contract. I remember there were some conversations at different times after the contract was made between Mr. Sweet and Gen. Benjamin as to the borrowing of some money by Mrs. Schoolcraft on Benjamin's house, "Vesper Place." That contract required Mrs. Schoolcraft to raise some money, either to pay Gen. Benjamin as a bonus, or with which to clear one or both of those houses from some incumbrance, and there was considerable conversation as to how she would be able to raise that money, and it resulted, as Gen. Benjamin subsequently told me, in her inability to carry out the contract.

94 By Mr. WORTHINGTON:

Q. Can you fix the date of this Schoolcraft transaction?

A. To the best of my recollection I should say it was in 1876, though I have no means of fixing the precise date. I know it was a considerable time after Gen. Benjamin came here after he had talked about buying other property, and I should think it was as late as 1876. He also talked with me about buying a lot, upon which he proposed to build a house, known as the Ordway lot, on the corner of East Capitol and First streets east. He talked a good deal about that lot; he said it was, in his opinion, the most desirable vacant lot in Washington; that he should like to buy it and improve it, and I think he made a proposition for the lot, which I understood was not accepted.

By Mr. BARNARD:

Q. Did he state for what purpose he intended to buy the lot?

95 A. He intended to build a house on it for himself.

By Mr. WORTHINGTON:

Q. Was this before or after the Schoolcraft trade?

A. I think it was before. He talked about that lot a good deal. He may have talked about it after the trade or proposed trade with Mrs. Schoolcraft. I know he mentioned it to me a great number of times, and expressed his admiration for the lot, but I think the offer was made before the contract with Mrs. Schoolcraft. I remember other real estate agents coming frequently to see him in regard to the sale or exchange of his property, "Vesper Place," Missouri, and calling his attention to different prices of property here. I remember, among others, the place called Clifton. I think that is the name of the place—near Georgetown—which was called to his attention.

Q. Do you remember anything he did about it.

96 A. I think he went to see the place with Mr. Huyck, a real estate agent in this city, but the place, for some reason, did not suit him. I remember his talking with me about the vacant lot on the corner of Fifteenth and Q streets N. W., which he was talking about buying and building a house on.

Q. You say that Gen. Benjamin spoke of buying several lots at different times and building houses. Did he say anything as to the kind of a house he proposed to build or as to the purpose for which he was to build it?

A. To the best of my recollection, in conversation with him about this lot last mentioned on the corner of Q and Fifteenth streets, I asked him what kind of a house he proposed to build, and he told me as near like his house in Shelbina as possible, or very similar. The idea was that he should build a house very nearly like the house, "Vesper Place," in Shelbina. I remember his also saying he wanted a house with a stable.

Q. Did he say he wanted a stable?

97 A. I do not remember that he did in that connection. I offered to sell him a horse on one occasion, or asked him if he did not want to buy a horse, and he said no; he had a very fine

horse in Missouri, which he proposed to bring here. He has said to me two or three times, in talking about vacant lots, that he wanted one to be large enough to admit of a stable being built.

Q. State whether at any time he spoke of taking either of these various houses or of building a house for the purpose of speculation.

A. He did not.

Q. Now, please tell me whether at any time he told you why he left Missouri and came here to enter into business.

A. He told me soon after he came here that he left Missouri because he considered it unsafe to keep his money there. He told me
bands of desperadoes had been raiding around in the State
98 committing robberies in the daytime, and he was afraid any
day they might come in on him, and for that reason he had
decided to leave the State.

Q. Did he say what business he had been in there?

A. In the banking business. He gave me as another reason for leaving there that he was taxed very highly. I think he said the personal tax was very high there. I remember when the personal tax law was passed here attending a meeting with him one evening, held by the citizens of Washington in Lincoln Hall, to take into consideration this tax law, which at the time was considered a very odious one. I remember Gen'l Benjamin taking a deep interest in it, and of his remarking at that time that that was one of the reasons for his leaving Missouri and coming here; that he was taxed very
highly there and would escape it here.

99 Q. Let me ask you whether he said anything about the
feeling out there against him, especially about an attempt to kill him, and the feeling of the population there growing out of that attempt?

A. I had frequent conversations with him about the condition of Missouri, politically, before, during, and subsequent to the war. He gave me at different times an account of his military history, and told me that while in command of the Union forces in that part of the State he had caused the arrest and execution of a number of outlaws and guerillas; that the feeling there was very bitter between the Union men and the rebels, and that that feeling had continued to a considerable extent after the war. He said that he had some very bitter enemies there, who would not hesitate to kill him if they had an opportunity. He told me on one occasion about being shot after the war by some one there on account of his course during the war.
I had perhaps better state that he told me—my recollection
100 is that he told me that the man who shot him was a rebel,
and perhaps that is the way that I got the idea that I have
just stated, that he was shot because of his course during the war. I had a brother who visited me here during the time that Gen. Benjamin was engaged in business, who had been some time talking of locating in the northern part of Missouri. I wrote to him and said he had better come down here and talk with Gen. Benjamin, who had lived there for many years, and who had given me a general

account of the place. My brother came down here and talked with Gen. Benjamin in my presence.

(Mr. Christy objects to the conversation.)

The WITNESS: I only allude to a conversation in my presence. I remember Gen. Benjamin telling him that it was at that time a very undesirable place for a republican or Union man to locate, 101 but that if he desired to go there, I think he told him he had some land he would sell him. They conversed a great deal on the subject in my presence, but much of the conversation related to the variety of the soil and the climate. I suppose that is not material here.

Q. Please let me ask what, if anything, he said about his wife residing here or there, and the reasons for it?

A. I remember his saying to me that he was afraid to leave his house alone. I think I asked him the question once if he did not consider his wife in danger there when talking about the lawlessness that existed there. He said no; that he did not consider her in any personal danger, but that he could not leave his house alone. I may say that the impression left on my mind by the different conversations I had with him upon that subject was that if his house was left alone they would know it. I cannot recall any precise words to that effect, but that is the impression that I now have and 102 have had; it was left on my mind from the different conversations we had on that subject.

(Mr. Christy objects to so much of the testimony as recites impressions left on the mind of the witness.)

By Mr. WORTHINGTON:

Q. Can you state whether or not he stated, in substance, that he left his wife there for protection?

(Objected to by Mr. Christy as leading in form and asking from the witness statements of conclusions.)

The WITNESS: I cannot recall that he ever said to me at one time any more than that he left his wife there to guard the property—to take care of it.

Q. Do you remember of Gen. Benjamin saying anything about exchanging "Vesper Place" for a farm in Mexico, Missouri; if so, what, substantially?

A. I remember Gen. Benjamin stated to me one day that he had a proposition to exchange his house at "Vesper Place" for a 103 farm near Mexico, Missouri, and at that time or subsequently he showed me a letter from some one in Mexico—I think it was the owner of the farm—giving a description of it. I remember several letters passed back and forth, and that Gen. Benjamin showed me two or three of the letters.

Q. Do you remember the name of the person with whom he had those communications?

A. I cannot recall the name now.

Q. Was it Duncan?

A. I think it was; I think that was the name.

Q. Did he say at each time anything about what he intended to do with the farm, or why he wanted to exchange Vesper Place for a farm; if so, what?

A. The farm was described in the letter as being a very desirable one.

(Objected to by Mr. Christy as stating the contents of a written statement.)

104 The WITNESS (continuing): And being a little curious to know why he wanted to exchange——

(Objection is here made by Mr. Christy to the witness' explanation of the condition of his mind which prompted him to see into this matter.)

The WITNESS (continuing): I asked him the question as to whether he proposed to locate in Mexico and occupy this farm if he made the exchange. He replied that he did not; that his only object in effecting the exchange was that he thought the farm would be more salcable than Vesper Place, and he told me that if he made the exchange he would sell the farm to me or my brother. Perhaps I may be a little mixed on that. At all events, he said he would sell the farm, and to the best of my recollection he said he would sell it to me or my brother.

Q. What period of time was covered by these various conversations to sell or exchange Vesper Place?

A. So far as I know, he never ceased in his efforts to sell
105 or exchange Vesper Place down to the time of his death. I
do not, however, remember of his saying anything about it
for a few months prior to his death. I do not know but what he might have talked about it, but I do not recollect anything about it for some little time previous to his death.

Q. Can you state whether he said anything to you or in your presence as to whether he intended to abandon the idea of the sale or exchange of that place?

(Objected to by Mr. Christy as leading.)

A. He never said anything to me from which I could infer that he did not desire to sell Vesper Place.

Q. The question applies to others. Did you hear him say anything to any other person in your presence?

A. No, sir; not to me, nor to any one in my presence.

Q. State whether at any time you heard Gen. Benjamin say anything in reference to closing up his business here, or in reference to
going back to Missouri to live, or going back there for any
106 purpose; if so, state what it was and when it was said.

A. I do not recall his saying anything to me, or in my
presence, relative to going back to Missouri to live. I think he said to me, or in my presence, a short time before he died, that he was going out to Missouri, but I did not understand that he was going out there, except temporarily, as he had done several times before.

(Objection is here made by Mr. Christy to the mental conclusions of the witness.)

Q. When he said he was going to Missouri, what, if anything, did he say as to whether he was going for a short visit or a long one, or for good?

A. I cannot recall anything beyond the fact stated, that he was going, and the impression that I derived from his statement, whatever it may have been, as to why he was going.

Q. And that impression is what?

A. That he was merely going out for a visit.

(Objected to by Mr. Christy.)

107 Cross-examination by counsel for Joshua M. Ennis, executor:

Q. Counsel hands to witness the copy of the will filed in this court under which letters of administration were issued to Mr. Truesdell, the witness, and thereupon enquires of the witness if he knows where the original of that paper now is.

A. The last time I saw it it was in the custody of the circuit court of Shelby Co., Mo., and I suppose it is there yet.

Q. Who drew the original paper, of which this is a copy?

A. I did—at the dictation of John Forbes Benjamin.

Q. Before the signature by Benjamin, was that paper which you drew read to him; and, if so, by whom?

A. It was—by me; it was corrected in some respects at his dictation, but this paper is a copy of the corrected paper.

By Mr. Lowe:

108 Q. Mr. Truesdell, you may state whether Mr. Benjamin boarded at the house where he died at the time of his death, and you may state how long he boarded there, if you know.

A. I believe he did board at the house where he died.

Q. And whether he lodged there.

A. I think he had rooms there. I am not positive whether he boarded there, but I think he did, but I am unable to state how long he boarded there; I have an impression, however, that it was about two months.

Q. If you know where he did board before he went to that house you may state it.

A. I do not know that I know. He boarded at one time at the New York Avenue Hotel, but I do not remember whether he went directly from there to this place or not.

Q. Well, in your examination-in-chief you stated that he was residing here in Washington from the time he came, in 1874, up to the time of his death, with the exception of two or four weeks
109 when he was absent, but you did not state where he was. Will you state that now?

A. I think he was at home in Shelbina, Missouri. I know once when he was absent he was in Missouri, because he told me he was going.

Q. In that connection I want to ask you one other question. Can you state about the time of the year that he was in the habit of going out to Missouri?

A. I think he went out once in the spring of 1876, and again in the fall of 1876, either the latter part of the summer or early fall, but I cannot recall the other times.

GEO. TRUESDELL.

110 *Testimony of G. T. Chase.*

Gabriel T. Chase sworn and examined by Mr. Worthington:

Q. Please state your full name.

A. Gabriel T. Chase.

Q. Your age, residence, and occupation.

A. Age, 42; 629 F street; accountant.

Q. How long have you lived in this city?

A. Eight years.

Q. Were you connected with the firm of Bigelow and Benjamin; if so, when and in what capacity?

A. From October 1st, 1874, to October 1st, 1875, as book-keeper for the firm.

Q. Were you there during the whole year or only part of it?

A. The whole year—every day.

Q. When did you make the acquaintance of John F. Benjamin, of that firm?

A. The 19th day of September, 1874, was the first time I had an introduction to him.

111 Q. How intimately were you acquainted with him during the year you speak of?

A. Quite intimately. I sat beside him and saw all of the business and was behind the desk with him for the whole year.

Q. What proportion of that year did he spend in Washington, as near as you can remember?

A. I do not think he was away but two weeks. I think he was away once for about two weeks.

Q. About the time he came here and you made his acquaintance, what, if anything, did he say to you or in your presence as to his future residence?

A. He said he intended to make it here.

Q. Do you remember any more fully on that subject? If so, state all you can recall.

A. In proposing the partnership he said it was one object in getting into the business here with Mr. Bigelow.

Q. He stated what was an object?

A. He said to invest his property here—to make it his home—to invest his funds here.

112 Q. What, if anything, did you hear him say during that year concerning the exchange or sale of Vesper Place, in Missouri? State all you know on this subject so far as it regards him.

A. He had a photograph of the place there, and on several occasions he tried to exchange it with parties which I can name.

Q. What did he want to exchange it for?

A. In one instance for several lots on the corner of Thirteenth and Q streets on which to build a residence for himself?

Q. How do you know he wanted to build a residence on that lot?

A. He spoke of the lot not being large enough to carry out the plans.

Q. Do you recollect any other particular exchange that he tried to make for Vesper Place?

A. He tried to exchange it for Mrs. Schoolcraft's house, and for what is known as the Hood house. The house is peculiarly formed and on that street it is known as the Hood house. It is on Q street between Fourteenth and Fifteenth streets, I think. It is Q or Corcoran. 113

Q. What did he say about the purpose for which he wanted Mrs. Schoolcraft's house?

A. To make it his residence and to live there.

Q. Do you know his objections to it?

A. Yes, sir.

Q. What were they?

A. That it was inconvenient to get coal in; that was one of his objections.

Q. Did he ever state to you why he wanted to sell Vesper Place or exchange it?

A. So as to reside in this city with his family.

Q. What, if anything, did he say to you during this year in reference to where his wife should stay?

A. I cannot repeat the words he said; I know he intended that she should live here with him in this city.

Q. How do you know that?

114 A. I think she wrote something about it, and he wrote to her something about the localities here in this city—about a residence in this city that she desired.

Q. How do you know that there was such a correspondence?

A. He held the letter in his hand and spoke of it at the time.

Q. What did he say about her staying there or coming here?

A. I cannot remember what he said any further than what I have stated, that he intended to have her come here.

Q. Did he consult her about the plans of the house he intended to build?

A. Yes, sir; or to live in.

Q. Did he give you any reason for not wanting to live in Missouri?

A. I heard him speaking of the excessive taxation there; that they considered him very able, and therefore they stuck it to him on the taxes.

Q. Able in what sense?

A. The richest man in town.

115 Q. They taxed him accordingly?

A. Yes, sir.

Q. Did you see Gen. Benjamin after you left the bank in 1875?

A. Yes, sir; occasionally.

Q. Do you remember whether, after October, 1875, you had any conversation with him in reference to where he proposed to live?

A. I think I had no conversation with him after that.

Q. Let me ask you whether you ever heard him say anything about going back to Missouri to live?

A. No, sir.

Q. You said you could give the names of persons with whom he negotiated for the exchange or sale [of] Vesper Place. Please give the names of such persons.

A. Charles A. Davis, on the corner of 12th and K street-.

Q. Who else?

116 A. Sergeant Ordway, on the corner of East Capitol and First streets.

Q. Do you remember anything he said about the Ordway lot?

A. He said he intended to build there, but the lot was a little larger than he wanted, and [he] asked Bigelow to take one lot off the end of it.

Q. Any other instance that you remember of? You have mentioned the Schoolcraft and Ordway.

A. I think there was the Morrison house, 11th and Mass. Ave. He asked $50,000 for it after repairs, and he thought it too much.

Q. As to these houses, will you state whether they were residences or some other kind of buildings?

A. They were residences.

Q. All suitable for fine private residences?

A. Yes, sir; except the vacant lots, and on those he proposed to build a residence.

Cross-examination:

117 Mr. Lowe: I do not think I want to ask any questions.

By Mr. Christy:

Q. What business was carried on by the firm of Bigelow & Benjamin?

A. A regular banking business.

Q. What amount did each of the copartners contribute to the capital stock?

A. $50,000.

Q. In cash?

A. Gen. Benjamin gave his check on the First National Bank of New York City, which was placed to our credit.

Q. Which check was honored?

A. Yes, sir; they drew upon us at once.

Q. Did not Gen. Benjamin, in fact, make purchases of real property in this District?

A. No, sir; not while I was with him.

Q. Is it not true that you had no knowledge of the business operations of Mr. Benjamin after you retired from your service in that firm?

118 A. I had no knowledge of his business, except casually as I would hear of his transactions.

Q. Do you mean to say from Gen. Benjamin or from matter of rumor such as is usual in the operations of prominent business men?

A. I heard something about his transactions from the other members of the firm by his clerks and matters that I heard of.

Mr. CHRISTY: I desire the witness to be instructed to confine his statements to facts either from his personal knowledge or derived from his conversations with Mr. Benjamin himself.

Q. All of the attempted purchases and exchanges of property to which you have referred were compressed into the period of about one year, were they not?

A. Yes, sir.

Q. Was it not a reason assigned by Mr. Benjamin for coming here that the tax upon personal estate and means in the State of Missouri were excessive?

119 A. I cannot say that it was.

Q. Did he not limit his remark in regard to excessive tax on personal property?

A. He did not.

Q. Did he distinguish as to personal property, or was his remark general?

A. It was general.

Q. Are you not aware of the fact that during the period to which you alluded there was no personal tax, so called, levied by the authorities of the District of Columbia?

A. I do not understand your question. I cannot say positively whether it was that year or not.

Q. Did that firm pay any personal tax during that year?

A. I do not know that they did, outside the banking license and capital. We paid the regular banking tax of our business.

120 Q. Are you not aware of the fact that subsequently to your leaving the employ of this firm that a personal tax was levied by the authorities of the District of Columbia?

A. I believe there was a personal tax levied.

Q. Are you not aware that during this period there was levied and collected in the District of Columbia on real property alone a tax of 5 per cent.?

A. I do not know anything about the personal tax at all from beginning to end.

Q. Did you not know that after the levy of the personal tax in the District of Columbia in the years 1876 & 1877 that Gen. Benjamin ceased his efforts both to sell and to exchange his Missouri property for property within the District of Columbia?

A. I know nothing about it, sir.

GABRIEL T. CHASE.

Adjourned to Jan. 29, 1880, at ten o'clock a. m.

121 *Testimony of E. J. Sweet.*

JANUARY 29TH, 1880.

Met pursuant to adjournment.

Present: Messrs. Worthington, Barnard, and Christy.

EDWIN J. SWEET sworn and examined by Mr. WORTHINGTON:

Q. Please state your full name.

A. Edwin J. Sweet.

Q. What is your age, residence, and occupation?

A. Age, 40 years; occupation, real estate broker; residence, in this city.

Q. How long have you lived here?

A. Since 1864.

Q. How long have you been in the real estate business?

A. About eight years.

Q. Did you know the late John F. Benjamin?

A. I did.

Q. When did you make his acquaintance?

122 A. When he first came to this city and entered into business with Mr. Bigelow.

Q. In what manner.

A. I was intimately acquainted with his partner, and met him at the bank and had an introduction to him.

Q. Did you ever hear him speak of Vesper Place?

A. He put that property in my hands to be disposed of by sale or trade; he gave me a photograph of the place.

Q. Please look at these photographs and state whether these are similar to the ones he gave you?

A. Yes, sir; he gave me similar copies; I have not seen these before, however.

Q. You say he gave you this property for sale or exchange?

A. Yes, sir.

Q. Now, at the time he gave you this property for sale or exchange, what did he say as to it?

123 A. He desired me to secure him a house here as a residence for this property if possible. He wanted a house suitable for himself to live in.

Q. Did he say anything as to where he intended to live in the future; if so, what?

A. He said he wanted to exchange that property for a house in Washington suitable for him to live in.

(The photographs are here offered in evidence, and are filed and marked Exhibit E. J. W., 1 & 2.)

Q. Did he say how long he intended to live here?

A. He said he should probably never return to Missouri, having gone into business here, and he wanted to sell his house there for that reason.

Q. For what?

A. Having gone into business here permanently, he was desirous to sell that house and get one here.

124 Q. Did you succeed in selling or exchanging that place for him?

A. The terms of agreement were drawn up between Mary Howard Schoolcraft and Gen. Benjamin and signed by both parties.

Q. Please state the contents of this contract—to what the parties agreed before it was drawn.

(Mr. Christy objects not only to any testimony of the witness in regard to the contents of the written instrument, but likewise to any statements in regard to any antecedent arrangements between the parties to that agreement, the written instrument itself being the best evidence.)

A. Mrs. Schoolcraft agreed to trade him her house, 315 C street N. W., for his house in Missouri. She was to give $5,000 as a difference in the value of the two houses. She was to leave her house free of encumbrances, and his house was to be free of encumbrances.

Q. Let me ask you if the exchange was carried into effect; if not, why not?

125 A. It was not carried into effect on account of the failure of Mrs. Schoolcraft to raise the $5,000.

Q. Can you fix the date of this contract or of the failure or the time it fell through?

A. I do not think I can accurately.

Q. Please look at this letter and examine it. (Handing witness a letter addressed to John F. Benjamin, and signed Mary H. Schoolcraft, dated April 8th, 1875.)

A. This letter seems to have been written pending the negotiation. My belief is that it was about that date that this contract was drawn.

(The above letter is offered in evidence and marked Exhibit "E. J. S., No. 3.")

EXHIBIT E. J. S., No. 3.

WASHINGTON, D. C., *April 8th*, 1875.

Mr. Benjamin.

MY DEAR SIR: I was speechless with astonishment when you showed me that letter on Tuesday last, wherein the fact was revealed that only $2,500 could be borrowed on that costly house of yours, and even for that trifling sum they required my absolute residence there. At that rate of assessment $10,000 could not be borrowed

126 on the whole village of Shelbina. It is a great disappointment, as I had written with such certainty to my children that Missouri was to be their immediate home, and so they made no preparation for the planting of their farm in Minnesota. I am very sure my daughter will sink into utter despair when I inform her of this new and astounding development*s* of the marketable*s* value*s* of property in Missouri. My Capit*al*-[Hill] house and G-street house cost more than $18,000 apiece to build them, as I was assured by several builders. The mortgages, the money loaned on them, proves that

they were worth double as much as said loan, for it is a universal custom here never to loan money on any property that is not worth double as much as the loan asked for; whereas in Shelbina they will not loan without your endorsement any money that is not secured by property worth or that cost twelve times as much as the said $2,500. Of course my creditors will now sell under deeds
127 of trust my Capitol-Hill house and my G-street house. I shall not open my lips in the premises.

I have made a brave fight to pay notes, not of my own drawing, to Mr. Heitmuller & Mr. Talmadge, and have failed to borrow at 6 per cent. the $5,000 in Missouri. Mr. Heitmuller says he is willing to take $6,000 cash, and wait a year for the ballance at 6 per cent. He also nobly offered to relieve me of a whole year's interest, leaving only $11,500 to be paid. But I have done my level best to save my daughter to her numerous little ones by total change of scene and the soothing rest of living under my immediate care. I have failed in this also, so shall run into my philosophies for contentment, and shall surely find it.

Resp., MARY H. SCHOOLCRAFT.

Q. Do you know the handwriting of that letter?

A. Yes, sir; it is the handwriting of the late Mrs. Schoolcraft.

Q. Let me ask you if you have a copy of the contract which the General and Mrs. Schoolcraft entered into, or if you know where the contract is or a copy of it?

128 A. I do not think I have a copy of it; I think it was destroyed in consequence of having been a failure.

Q. Let me ask you whether, after the failure of this exchange, you had any further dealing with Gen. Benjamin in reference to the sale or exchange of Vesper Place; if so, what?

A. After the failure of this contract to purchase with Mrs. Schoolcraft I drove Gen. Benjamin about the city on a number of occasions and showed him other pieces of property for sale or exchange, and he expressed a desire to purchase them if he got any trade.

Q. To purchase what?

A. A residence.

Q. Did he make any further statements as to where he desired to live after the failure of the Schoolcraft exchange?

A. I do not remember any particular conversation had with him, except that he was desirous of getting a residence here, a house here. That was my business with him, to find him such
129 a house.

Q. Did you succeed in finding him such a one?

A. I did not succeed in finding one that suited him.

Q. How long did these efforts to get him a residence continue after the Schoolcraft exchange failure?

A. I think it was two or three months before he seemed to abandon the idea of getting a residence; two or three months is my recollection.

Q. Did he abandon the idea of getting a residence?

A. He did with me. He left this property in my hands for trade.

Q. How long did he leave the property in your hands?

A. He never withdrew it. What I referred to was that I never took him out in my buggy after that.

Q. State whether if he ever said anything about changing his mind about residing here?

130 A. I have no recollection of having any conversation on that subject after that.

Q. Did you see him after that?

A. I saw him almost every day.

Cross-examination by Mr. CHRISTY:

Q. During the time of the negotiation touching the Vesper Place where was your office, Mr. Sweet?

A. No. 509 Seventh street.

Q. How long did your office remain there?

A. Until 1877.

Q. What time in 1877?

A. I think in the fall of 1877.

Q. Is it not true that Mr. Benjamin placed this Vesper property in your hands for sale or exchange, with some limitation upon the time that you were to have control over it?

A. No, sir; no limit was given whatsoever.

Q. Did you make any entry upon the book of your transaction with him?

131 A. I do not think I did. It was not my custom to put property out of the city—except the book of farms. I find no entry in my book of farms. I had the photograph in my office for several months. I think I had no other entry of it.

Q. I infer from your answer to the last question that you have examined your book and find no entry of this Vesper Place; is that true?

A. That is true.

Q. How soon after you ceased to carry Mr. Benjamin around with you in your buggy was it that he demanded a return from you of the photographs of Vesper Place?

A. I think I have still a photograph of it. I do not think they were ever withdrawn. I think I have a photograph now in my office.

Q. I wish you would produce that photograph. I was not aware that they had not been withdrawn from you. After the fail-
132 ure of the negotiations between Mr. Benjamin and Mrs. Schoolcraft did Mr. Benjamin himself solicit your offices in effecting the sale or exchange of this property?

A. He desired, as before, to secure a place for a residence for himself in this city, and after our failure to secure this trade between Mrs. Schoolcraft and himself he still further desired me to look about and show him other property that I had that a trade might be made.

Q. And this was kept up for a period of two or three months, and after that it ceased?

A. Yes, sir; after that it ceased.

Redirect examination by Mr. **Barnard**:

Q. Did you frequently see Gen. Benjamin after that while he lived here?

A. I saw him, as I said, almost every day.

Q. Did you hear him say anything about making his home here or moving away from here?

133 A. He frequently asked me if I had anything to trade for his house in Missouri up to the time of his sickness.

Recross-examination by Mr. **Christy**:

Q. If Mr. Benjamin's anxiety to purchase a residence here had been very great was he not a man of sufficient means to have purchased without the use of Vesper Place?

A. I think he was. I have no doubt of it.

134 *Testimony of G. C. B. Rowan.*

George C. B. Rowan sworn and examined by Mr. **Worthington**:

Q. Mr. Rowan, will you please state your age, residence, and occupation?

A. Age, 22 years; I reside in this city; I am chief clerk for Gilmore & Co., 629 F St.

Q. How long have you lived here, Mr. Rowan?

A. About eight years.

Q. Were you connected with the firm of Bigelow & Benjamin in any way?

A. Yes, sir.

Q. When and how?

A. From March, 1875, until—no, I am mistaken; it was March, 1875 or 1876, until the early part of 1879.

Q. Until after Gen. Benjamin's death?

A. Yes, sir.

Q. Did you succeed Mr. Chase?

A. Yes, sir.

Q. Did you go there when he left?

A. Before he left.

135 Q. He has testified himself that it was Oct., 1875.

A. I think I went there in March, 1875 or 1876.

Q. During Gen. Benjamin's life, when you were with the firm, how were you acquainted with him; on what terms?

A. I was book-keeper, and frequently talked with him about his matters. I had charge of his private affairs; kept his notes, &c.

Q. Besides being clerk of the firm you were to some extent his secretary?

A. Yes, sir.

Q. Do you remember any conversation with the general as to where he proposed to live?

A. I have heard him speak frequently about different pieces of property in this city that he was trying to purchase. One was on the corner of First and East Capitol streets that he was trying to trade his Missouri property for, and to build on it. On failing in that, to purchase it. I think he offered him a certain 136 amount which was less than Ordway wanted, and he failed to trade.

Q. He said he proposed to build a residence. Did he say how long he proposed to live there?

A. No, sir. I should judge, from what he said——

Q. Please state the substance of what Gen. Benjamin said, as well as you can recollect it, about residing here, and especially as to the duration of his residence?

(Mr. Christy here desired the register to instruct the witness to exclude from his answer what his conclusions are.)

A. He said his business interest- were here; that he preferred to reside here, and that he wanted to sell that property and purchase a residence here and reside here; and that he had no further business interest in Shelbina; that his residence there was the finest or one of the finest there, or words to that effect.

Q. Do you remember of his saying anything as to where his wife should reside?

137 A. I do not think she was mentioned as residing anywhere.

Q. Do you remember anything about the proposed trade of Vesper Place for the house of Mrs. Schoolcraft?

A. I remember there was such an agreement between —, and I saw the same you have there.

Q. Did you see it at the time?

A. I do not know where it was, but I saw one very much like that. I had forgotten the occurrence until I saw the handwriting.

Q. Do you remember his saying anything as to having his house in Shelbina taken care of while he was trying to sell it?

A. I have an indistinct recollection of something of that kind, but not sufficient to enable me to give any definite answer.

Q. Let me ask you whether he said anything about his wife was taking care of the property until he could sell?

(Objected to by Mr. Christie as leading.)

138 A. I think he did. It is some years since the occurrence of the things, and I have forgotten them in minor details.

Q. Now state whether during Gen. Benjamin's lifetime you heard him say whether he had changed his mind about living here.

A. No, sir; I think it was the last day of February of 1877, or the last day he was at the office—he was then going to leave the following day for Shelbina to close up his affairs there.

Q. What did he say about that?

A. I asked him how long he would be gone. He said three or four weeks; his wife was very sick. He was going out there to close up his business. He had a great many notes and other matters coming due; he left with me written instructions in regard to every one of them.

Q. Did he say anything as to where he intended to live after closing up his business?

139 A. Nothing more than what I have said about his coming here to make Washington his permanent home. Those were things I did not pay as much attention to as I did to instructions regarding his business.

Q. During these conversations the business of Bigelow & Benjamin was going on?

A. Yes, sir.

Q. Was anything said about closing it up?

A. No, sir.

Q. What part did he take in the business?

A. He was the teller.

Q. Was his part a minor or leading one?

A. He took the active part.

Q. Do you remember of his stating any reason for leaving Missouri?

A. I have before stated that he had no business interest there; that he did not care to reside there; that he had built a large house there, and that he desired to get rid of that; that he had invested more money than he could get out of it again.

140 Q. Do you remember anything about the feeling there toward him?

A. There was a difference in feeling, politically. He was a republican and they were democrats. I think the feeling was carried very high. I think he was wounded one time.

Q. You say you think these things?

A. I say them from what I heard him say.

Cross-examination by Mr. Christy:

Q. You are one of the legatees named in the will?

A. I am.

Q. One of the plaintiffs or petitioner- in the matter pending, are you?

A. I am one of the legatees; I don't understand all of your legal phrases, sir.

Q. In what manner is your testimony being taken here, or are you aware?

The Witness: In what manner?

Mr. Christy: Yes, sir.

The Witness: In the contested will case of Benjamin.

141 Q. Have you filed any petition here with the reference to it?

A. I have; being one of the legatees, I desire to have the money paid.

Q. You are the Mr. Rowan named in that petition?

A. Yes, sir.

Q. During the time that Mr. Chase remained in the employ of

Bigelow & Benjamin were your relations to Mr. Benjamin as intimate and confidential as they became afterwards?

A. No, sir; and particularly not at first when I first entered the bank. I was there but a short time before Mr. Chase resigned; perhaps a few months.

Q. You were there from March to October?

A. I was there from March or May; I don't remember which; it was in the spring, I think; I commenced to occupy the desk in September.

Q. Then your relations as private secretary began on Mr. Chase's retirement from the firm?

A. I can't remember when they commenced.

142 Q. Mr. Benjamin was a person of large means?

A. So supposed to be; yes, sir.

Q. Are you not able to state from your intimacy with him from his private sources—that is, independently of his interest in the firm of Bigelow & Benjamin—he had a private estate that he did not commit to the interest of the firm?

A. I guess he had $100,000. I don't mean independent of his interest in the bank.

Q. Didn't he during this time you speak of make loans as an individual?

A. He made a great many.

Q. Didn't he make an investment in bonds of his private means?

A. Yes, sir.

Q. Was he not the owner at the time of his death of twelve thousand six per cent. gold-bearing bonds of the District of Columbia?

A. He had quite a large amount, but what amount I don't remember. Some of them I went down to Lewis Johnson & Co.'s and got them for him.

143 Q. You purchased at his instance?

A. Yes, sir.

Q. How long previous to his death was it that you made this purchase for him?

A. I don't know; as my recollection serves me, I should say six or seven months—perhaps five months.

Q. Where were *this* bonds kept?

A. Well, I don't know; part of the time they were in the vault of the safe of Bigelow & Benjamin; perhaps they were there all the time.

Q. Did he express any apprehension as to the safety of his property in Missouri in these conversations?

The WITNESS: I don't understand what you mean by the question.

Mr. CHRISTY: As to the danger by guerillas or otherwise?

A. I don't know. He had gasoline wells there that supplied light to his house.

Q. Did he have any apprehension of arson, by fire of his building from evilly-disposed persons, or was it from explosion from his tanks?

144 A. I don't know that that was his only fear.

Q. Which fear did he express to you?

A. I don't know that he expressed any great fear of either.

Q. Did he express any fear that his personal property was in danger of destruction by larceny or robbery?

The WITNESS: By personal property I suppose you mean his property about his own person?

Mr. CHRISTY: I mean his books and other matters.

A. I don't think he spoke of that matter at all. I don't now recollect of any.

Q. Were you not continuously in his office under your employment by Bigelow & Benjamin?

A. Yes, sir; during business hours. I may have gone out to lunch occasionally.

Q. You were there excepting when your duties called you elsewhere?

A. I attended to my business carefully.

Q. Didn't you attend Mr. Benjamin in his last sickness as nurse and friend?

145 A. I did; yes, sir.

Q. Didn't Mr. Benjamin give you instructions to obtain the gold-bearing bonds for the purpose of transmitting them to Missouri?

A. No, sir.

Q. What did he say to you on that subject?

A. One time he called me to him and wished me to go to the office and bring him certain bonds that he had.

Q. Did he describe the bonds?

A. He spoke of them as gold six per cent. bonds.

Q. You knew what he referred to?

A. Yes, sir.

Q. Did he express to you the purpose for which he had——

(Mr. WORTHINGTON: I object to this examination going any further. What these bonds have to do with this matter I don't know.)

Mr. CHRISTY: The gentlemen have put in evidence what purported to be the statement of the deceased in regard to the
146 condition of society in Shelbina, Missouri, the apprehension of the deceased not only of injuries to his person, but to his property; likewise his declarations of a desire to transfer his property of a personal character to the city of Washington, and to exchange his real property. Now, I desire to show by the witness a declaration of the deceased that he intended to obtain from the banking house of Bigelow and Benjamin these specific bonds for the purpose of transmitting them to the State of Missouri.

(The objection is withdrawn by Mr. Worthington.)

By Mr. CHRISTY:

Q. State all of the language that you recall, used by M. Benjamin, with reference to these gold-bearing bonds.

A. He simply requested me to go to the bank and bring him certain bonds which were in the vault of the safe.

Q. When was that?

A. It was when he was sick; I don't remember how long it was before his death.

147 Q. Are you able to recall with definiteness the conversations to which you have testified after this lapse of time?

A. What I have testified to I recall.

Redirect examination by Mr. WORTHINGTON:

Q. From the time you became connected with the firm of Bigelow & Benjamin down to the date of the General's death, what proportion of his time did he spend here attending to business?

A. Almost constantly; as I now recollect, he was absent during the several years that I was there—perhaps two or three weeks, perhaps not so long.

148 *Testimony of Otis Bigelow.*

Mr. OTIS BIGELOW sworn and examined by Mr. WORTHINGTON:

Q. Mr. Bigelow, state your full name.

A. Otis Bigelow.

Q. Also your age, residence, and occupation.

A. My age is 47; my business is that of a general business man—farming, banking, and law.

Q. You are *not* a lawyer?

A. I am.

Q. You were a member of the late firm of Benjamin & Bigelow?

A. I was.

Q. Composed of yourself and John F. Benjamin?

A. It was.

Q. I believe before that firm was formed you were yourself in the banking business here?

A. I was.

149 Q. Tell *is*, in a very brief way, how you became acquainted with him and went into the banking business with him.

A. On the 26th of August Mr. Benjamin was brought into my office and introduced to me. He said he heard my name in connection with real estate on Capitol Hill, and knew very well in Onandaga, New York, a man of the same name. He said that he concluded that I must be the son of that man, and if so I was very competent to advise him. He said he thought of making some investment here, and wanted to talk with me about it.

Q. Did you about that time go into partnership with him or form articles of copartnership?

A. The next morning we formed a copartnership.

Q. Was the agreement in writing?

A. Yes, sir.

Q. Have you it here?

A. Yes, sir.

Q. Is this it? (Exhibiting articles of agreement.)

A. Yes, sir.

150 Q. You desire to retain this original agreement?

A. Yes, sir.

(It is here agreed by counsel that a copy of this agreement may be made and put in evidence, and it is marked Exhibit O. B., No. 1.)

Exhibit O. B., No. 1.

The undersigned parties to this agreement have this — entered into a partnership for the purpose of carrying on a general banking and brokerage business in the city of Washington, District of Columbia, under the firm name of Bigelow & Benjamin, and to continue for the term of five years, unless sooner dissolved by mutual consent, commencing October 1, 1874.

It is agreed that each partner shall put into the partnership the sum of fifty thousand dollars in cash, or an equivalent satisfactory to the other party; that no part of said sum shall be withdrawn, nor any of the interests or profits arising therefrom, except as dividends regularly declared by the firm, nor shall the account of either partner with the firm be overdrawn, unless with consent of the
other member, each member of the firm to give his undi-
151 vided attention to the firm's business if needed, to the exclu-
sion of his private affairs; each member to have a peremptory veto on the proposed action of the other member in everything that pertains to the loaning and investing of the firm's money, and every other important matter in connection with its business, it being the intention of the parties that the consent of both shall be necessary in all such cases; neither party to be at liberty to use the name of the firm in any case pertaining to his private affairs or the affairs of other parties, it being the intention that the firm shall not in any case be made liable for any obligation not its own.

Another member may be admitted into the partnership who is not objectionable to either of the undersigned by contributing an equal amount of capital with each of us and assenting to this agreement by signing the same at any time within six months from January 1, 1875.

Finally, each member of the firm to observe the strictest integ-
rity and fair dealing with each other and with those with
152 whom the firm has dealings, and in all things seek to make
the firm business a success, any willful and palpable violation of the foregoing on the part of either member without the assent of the other to work a dissolution of the partnership, at the option of the member not so in fault.

In testimony whereof we have signed our names to duplicate copies and affixed our seals this 27th day of August, 1874, at the city of Washington, District of Columbia.

OTIS BIGELOW. [SEAL.]
J. F. BENJAMIN. [SEAL.]

Witness:
G. T. CHASE.

True copy.
Test: A. WEBSTER,
Register of Wills for the District of Columbia.

January 31st, 1880.

Q. State whether you went into business together in accordance with that agreement?

A. We did.

Q. When?

A. The first day of October, 1874.

Q. Did Gen. Benjamin contribute the $50,000 that he there agrees to put in?

A. He did.

153 Q. And continued in business with you until what time?

A. Until his death.

Q. During that interval what proportion of his time did he spend away and what proportion here attending to your firm business?

A. I think he was absent about three times—two or three times—three times I think.

Q. About how long was he absent on each occasion?

A. The longest time was about 30 days; I could not say whether it was two or three times; he went away directly after the contract was made; we were not in business then.

Q. At any time previous to his death had any change been made in your partnership arrangements?

A. The capital was changed frequently.

Q. Were [there] other changes?

A. No, sir.

Q. Was there any arrangement made by which the partnership was to be dissolved before five years?

A. No, sir.

Q. Was there any arrangement about what should take place at the end of five years?

A. No, sir.

154 Q. Was the business in full operation at the time of his death?

A. It was.

Q. Had any arrangement been made to wind up or close it up?

A. No, sir.

Q. What part did he take in the firm—a leading or secondary part?

A. He handled all the cash; he took a leading part.

Q. So far as you know, was he engaged at this time in any other business?

A. He had one or two lawsuits that he had to close up where he was counsel.

Q. Had he any other business?

A. None but money business; he invested money here in the District of his own.

Q. About the time Gen. Benjamin first came here and went into business, what, if anything, did he say to you as to where he proposed to reside?

A. When he first came it was in regard to investing in real
155 estate, but when I talked with him about the opportunities of
investing money in bills and notes he asked about the method
of my business, usury laws, and nature of our transactions.

Q. About what?

A. About going into the banking business.

Q. I want to know what he said about where he was going to live.

A. He said he had served six years as a Congressman, and that he would like to come here to live.

Q. Do you know anything further—anything about purchasing a house here for a residence?

(Mr. CHRISTY: I suggest, for economy of time, that the other witnesses have gone so fully into the Schoolcraft and Ordway matter that you suffice with him by letting him allude to them.)

Mr. WORTHINGTON: I don't want Mr. Bigelow to go into any of the details of these matters. (To the witness.) Did you hear him say anything about getting a residence here?

A. I often heard him talk about it.

156 Q. Tell us the substance of what he said about acquiring a residence here.

A. I can't remember his language, but I know I took him to see one or two pieces of property myself where I was specially interested.

Q. What kind of property was it?

A. I showed him a house owned by Mrs. Louisa G. Smith, part of a house formerly occupied Dr. J. H. Thompson and enlarged by Mrs. Smith near Mike Thompson's residence, on Massachusetts avenue.

Q. Were the houses that he looked at fine residences?

A. Yes, sir; they were.

Q. Did he state what he wanted with them?

A. He said he wanted a nice house to live in.

Q. Do you remember whether or not he said anything as to how long he intended to live here?

A. I can only give the substance of my recollection.

Q. Give your recollection.

157 A. That it was to be a permanent residence.

Q. Were you at the bank continuously up to the time of his death?

A. Every day.

Q. You didn't have any absence?

A. No, sir.

Q. Let me ask you whether at any time before Gen. Benjamin's death he said to you, or in your presence, anything as to his having changed his mind about that matter and intending to go back to Missouri.

A. He never said enough to indicate that he intended to do so.

Q. Do you remember whether he continued his efforts to effect the sale of Vesper Place down to the last days of his death?

A. I think he did until the great depression in real estate began to take place, which made exchange hopeless.

Q. Do you know whether or not he ever did abandon the idea of getting rid of Vesper Place?

158 No, sir; I don't think he did.

Q. Did he give you any reason for leaving Missouri and coming here?

A. On our first interview, and often afterwards, in speaking of this matter, he told me, on the first interview, that he had just closed out a very successful banking business in Shelbina. He said there was bands of lawless individuals that came into places like Shelbina, and that he was afraid to carry on the banking business in a place where they could come in and sweep it right out. The papers at times were full of accounts of that kind.

Q. Do you remember any other reason that he gave for leaving there?

A. He considered himself very unjustly taxed there.

Q. How do you know that?

A. He said so. He said he was unjustly taxed; that he had to pay a very large proportion of the school tax and had no children, and he had to pay for his own sidewalk, and that they had treated him shabbily.

OTIS BIGELOW.

159 Cross-examination by Mr. CHRISTY:

Q. Did not Mr. Benjamin, during the time that he was in business with you, make a purchase of real property here?

A. He did.

Q. Of improved property?

A. He purchased one piece of improved and one of unimproved.

Q. During your continuance in business with him did the firm make any voluntary purchase of real property?

A. The firm made involuntary purchases of real property.

Q. Did they make any voluntary purchases—that is, without being required to do so—to secure indebtedness charged against them?

A. They did not.

Q. In your judgment, and from your knowledge of the pecuniary circumstances of Mr. Benjamin, would he have been able to purchase and furnish a residence in this city if he had been so disposed?

A. Yes, sir; I think he would.

160 Q. Did he keep house at any time during his business connection with you?

A. I think he did, in a house he rented on Capitol Hill.

Q. Are you able to fix with exactness the time of the year at which Mr. Benjamin left on his trips to Missouri?

A. Not without reference to the books.

Q. Your books will show when he went away and how long he remained?

A. I think I might cipher it out.

Q. You have said, in your examination-in-chief, that Mr. Benjamin returned to Missouri between the time of making the copartnership agreement and its taking effect. Please state at what time he made his next trip to Missouri and how long he remained.

A. I can tell you why he went.

Q. No; I do not want the why, but I want your recollection.

A. I cannot tell how long he was gone or when he went; I cannot remember.

161 Q. Now, state your recollection of the trips of Mr. Benjamin to Missouri; how many there were after you entered into business with him, and how long he remained away; whether at each trip, if you can; if you cannot, say so.

A. The first time he went was to argue.

Q. I do not want the reason. If you do not remember, say so.

A. I do not remember.

OTIS BIGELOW.

162 Mrs. MARY R. BIGELOW sworn and examined by Mr. WORTHINGTON:

Q. Will you please state your full name?

A. Mary R. Bigelow.

Q. You are the wife of Otis Bigelow, who has just testified?

A. Yes, sir.

Q. Did you know the late John F. Benjamin?

A. I did.

Q. Did you have any conversation with him in reference to his acquiring his residence here?

A. He used frequently to speak of it when he was visiting us—of his intention.

Q. What did he say on that subject?

A. He was anxious to get a residence here and get property here that would suit him to live in. He said that he wanted we should should build houses together on the same lot.

Q. Did he say what he wanted this house for?

163 A. To live in. We offered to sell him ours, but he said it was not large enough for him. He had the plan of one in Missouri, and if he built one it would be like that.

Q. Do you remember of having heard him say anything about changing his mind on that subject?

A. No, sir.

Q. When did these conversations occur?

A. During all his visits; they were in the early part of his partnership with my husband. Whenever he came to the house he talked about it.

Cross-examination waived.

MARY R. BIGELOW.

164 Mrs. LUCRETIA J. DAVIS sworn and examined by Mr. WORTHINGTON:

Q. You are the mother of the last witness?

A. Yes, sir.

Q. And reside here with her?

A. Yes, sir.

Q. Did you know the late John F. Benjamin?

A. Yes, sir; I saw him quite frequently.

Q. It was after he went into partnership with Mr. Bigelow?

A. Yes, sir: I was often at the office and he was at the house.

Q. Do you remember any conversation that you had with him or that he had with others in your presence in reference to acquiring a residence here?

A. Yes, sir; I said to him that we should be glad to welcome Mrs. Benjamin here, and he said he should bring her here, but it was the house in Missouri that kept her there, and that as soon as he
165 exchanged that property he would bring *bring* her here, and once he spoke of bringing her here even if he did not sell his house. I went with him to see Dr. Thompson's house, fitted up by Mrs. Smith, and think he made a distinct offer to Mrs. Smith for it.

Q. Do you remember as to whether he said anything as to where he should permanently reside?

A. He seemed to speak of this place as a place where he would like to live. He wanted to get rid of his property there and come here to live. I also heard him speak of seeing Mrs. Schoolcraft and having examined her property with a view of exchanging for her property.

Q. Did you hear him say anything before his death of his having changed his mind?

A. No, sir.

Q. How long before his death was the last time you had a conversation with him on this subject?

A. I do not know. It was within the year of his death.
166 We were always expecting him to make the change. He was disappointed in not making an exchange on two or three occasions.

Q. Did he give you any reasons for leaving Missouri?

A. He spoke of the circumstances of his leaving there. I took it that he was in fear of his life there.

Q. What were the circumstances?

A. His having been shot by a party. He did not know what designs they might still have towards him.

Cross examination waived.

LUCRETIA J. DAVIS.

167 *Testimony of Watkins Addison.*

WATKINS ADDISON sworn and examined by Mr. WORTHINGTON:

Q. What is your residence and business, Mr. Addison?

A. I am in no business; my residence is Georgetown, D. C.; I have been recently in the real estate business, but I was paralysed about two years ago; I was formerly in business with Mr. Huyck; I was in that business from 1876 to 1878; I was not associated with Mr. Huyck at first; I continued in the real estate business independently after I separated from Mr. Huyck until 1878.

Q. Did you know the late John F. Benjamin?

A. I had no acquaintance with him except in a business way.

Q. How did that business arise?

A. It arose from his trying to exchange his property out West for property in the District of Columbia.

Q. Did he give you a photograph of it?

A. Yes, sir; he gave me a photograph.

168 Q. Was it like this?

(Counsel here shows witness exhibits marked "E. J. S., 1 & 2.")

A. Yes, sir; it was like those.

Q. And you got those photographs from Benjamin as a picture of the property that he wanted to dispose of?

A. The identical property that he wanted to exchange.

Q. What kind of property did he want to get in exchange?

A. He wanted property for a residence in the city or suburban property.

Q. How do you know that?

A. Because he said so.

Q. Do you remember anything he said to you as to where he intended to reside?

A. No, sir; I presume he desired to reside here; he wanted to get a house to live in; he had no other idea about it.

169 Q. Did you succeed in making an exchange for him?

A. No, sir; I thought I had succeeded in one or two instances, and in one instance on the suberbs of Georgetown—a place called Clifton—but failed because they asked $45,000 for it. He held his property at $25,000, and he thought he would have to pay out too much money. He wanted property as near as possible to the value of his property out there, but was willing to pay a little difference in cash.

Q. State whether at any time he withdrew the property from your hands.

A. No, sir; I have no recollection of his having done so.

Q. Did you hear him say anything as to changing his purpose of living here?

A. None whatever.

Cross-examination waived.

WATKINS ADDISON.

170 Otis Bigelow recalled by consent.

By Mr. Worthington:

Q. I want to ask you whether Gen. Benjamin ever said anything to you about bringing his personal effects here; and, if so, what?

A. He said he could charter a car all the way, and that it would take at least a car to hold his books, and that he should bring his horse and buggy, and that he would not sell it on any account, but that he would bring it on here.

Cross-examination by Mr. Christy:

Q. Will you please fix the time at which the improvements known as Vesper Place were made by Mr. Benjamin as nearly as you can from information derived from Mr. Benjamin on that subject?

A. No, sir; I do not know.

Adjourned to Tuesday, Feb'y 3, 1880, 10 o'clock a. m.

171 FEBRUARY 3RD, 1880.

Met pursuant to adjournment.

Present: A. S. Worthington, Esq., Job Barnard, Esq., and Robert Christy, Esq.

Testimony of E. Faehtz.

ERNEST FAEHTZ sworn and examined by Mr. WORTHINGTON:

Q. Please state you age, residence, and occupation.

A. I am in my 56th year; residence, Washington, D. C., for the present; I am employed in the Pension Office of the United States.

Q. Were you acquainted with John F. Benjamin from the time he went into business here until his death?

A. I was acquainted with him nearly all the time. I had known him slightly before, but I cannot remember exactly when he went into business. On reflection I do not know when he went
172 into business with Bigelow, but it was in the fall of 1874.

Q. What was your business at that time?

A. I was engaged in the real estate business, together with James F. Russell, on 7th St., 515 7th St., very close to Bigelow & Benjamin's bank.

Q. Where is Russell now?

A. To the best of my recollection he is engaged in mining in Virginia.

Q. Do you remember any conversation with Benjamin about a residence here in this city?

A. I had conversation with Mr. Benjamin at different times. I do not recollect whether it was about a residence, but, indirectly, it was in connection with business of my line, trying to trade his property in Missouri for property in this city for the purpose
173 of residing here permanently, but I do not recollect the words.

Q. How long before his death was this, as near as you can remember?

A. It must have been a couple of years. I think he died, if I remember rightly, within the last two years.

Q. March, 1877, three years ago?

A. Yes, sir.

Q. Do you remember how long it was after he came here?

A. I cannot say that, but I know it was between the fall of 1874 and the beginning of 1876, because it was before I entered upon the duties as superintendent of the asylum.

Q. Can you not fix the date of the conversation any more closely than that?

A. No more than I believe it was in the summer of 1875.

Cross-examination by Mr. CHRISTY:

174 Q. How long after October, 1874, did you remain in business with Mr. Russell?

A. Until the first day of February, 1876. I know that date, because we then dissolved partnership.

Q. You entered then upon other business, did you not?

A. No, sir; I continued for some time in the same line of business.

Q. How long? Approximate it; I do not want the exact date.

A. More or less until August, 1877.

Q. When did you become superintendent of the Washington Asylum?

A. On the 1st day of August, 1877.

Q. Since that time you have had no int-rest or connection in the business?

A. No, sir; I do not think I ever spoke with Mr. Benjamin since that time.

175 Q. Did you meet Mr. Benjamin from the time you became superintendent until his death?

(Question repeated.)

A. I believe I saw him once or twice in his bank.

Q. Did you converse on business with him?

A. Not as to his residence, but it was on money business.

Redirect examination by Mr. Worthington:

Q. Did you ever hear him say anything about his return to Missouri to live?

A. Never.

Recross-examination by Mr. Christy:

Q. Was that ever a subject-matter of conversation between you?

The Witness: His changing his residence?

Mr. Christy: Yes.

A. No, sir; I do not believe it was.

176 The Witness: The business conversation that I referred to was the conversation after the partnership between Mr. Russell and myself was dissolved, and after I became superintendent of the asylum.

E. F. M. FAEHTZ.

177 *Testimony of Hawkins Taylor.*

Hawkins Taylor sworn and examined by Mr. Worthington:

Q. Please state your age, residence, and occupation.

A. Residence, 48 B street N. E.

Q. You occupation or have you retired from business?

A. It might be said that I am in the mail service.

Q. How long have you resided in this city, Mr. Taylor?

A. I have claimed this place as my residence since about 1865. I was here several years before that, but I did not claim a residence until about 1866.

Q. Did you know the late John F. Benjamin?

A. Very well indeed.

Q. When did you make his acquaintance and how?

A. I made his acquaintance first in Missouri during the
178 war. I do not think I met Benjamin after he went out of Congress until I met him on the avenue. It was before he went into business with Bigelow. I inquired how long he would be here, and he said he would remain here; that he could not remain in Missouri, but he would stay here; that he had determined to settle here. I do not think I inquired what he was going to do, but I supposed he was going to practice law. He was a good lawyer. I had no idea he had the money he had. I do not think I inquired what he was going to do here.

Q. Let me ask you whether the word "settle" is his word or yours?

A. It is his; he said he was determined to leave Missouri and settle in Washington.

Q. Did he give any reason?

A. He said he could not live there safely, and that he was
179 going to leave. A few days after that conversation I met John P. Clark a very particular friend of Benjamin.

(Mr. Christy objects to conversation with Clark unless Benjamin was present.)

Q. Did you afterwards have any conversation with Benjamin with reference to his residing here; and if so what was it?

A. Well, I understood that Benjamin wanted to buy a lot on the corner of East Capitol and the park—the Ordway lot. I wanted to sell him my own house on 1st street N. E., but I found he was attached to the other property, and that he wanted to build himself a fine residence there.

Q. Hou did you find that out?

A. He told me that he wanted to build a fine residence that would cost a good deal of money, and that he thought that that was the handsomest place in the city and would make one of the
180 finest residences.

Q. Did you have any other conversation?

A. I think he said he would swap his property in Missouri for my property. But I told him I only wanted to sell my property because I owed money. He showed me a photograph of his property in Missouri and said it was a fine place.

Q. Did you have any other conversation on the place of residence?

A. I used to go in frequently and very regularly into his bank and talk with him, but I do not recollect anything particular. I understood all the time that he claimed this as his residence. He told me that he swapped his property for property here.

Q. Do you recollect what property that was?

A. I only recollect that it was the Schoolcraft property.

181 Q. He told you he had exchanged his property in Missouri for the Schoolcraft property?

A. I do not recollect the Schoolcraft name, but he told me where it was.

Q. And where was it?

A. It was on Q street, I think it was; it was in that neighborhood, and afterwards he told me that that had failed, and he would not get that property.

Q. Did he say whether he intended to continue his efforts?

A. My recollection is that he met with some losses in money matters; that he could not build a house just then.

Q. In consequence of his losses?

A. Yes, sir; that is my recollection.

Q. Is there anything by which you can fix the date of that conversation?

A. No, sir; I cannot tell.

182 Q. Did you continue to see him more or less down to the time of his death?

A. Yes, sir; I was at his bank frequently.

Q. Did you ever hear him say anything about going back to Missouri to live?

A. No, sir; I never did.

Cross-examination by Mr. CHRISTY:

Q. Is it not true that after this conversation with Mr. Benjamin, in which he alluded to certain losses with which he had met, that he made no allusion to any purpose of bringing his family to this city?

A. I never heard him make any. I do not think I ever talked with him after that conversation. I then renewed the efforts to sell him my property. I told him there would not have to be any money paid on it; that he would have time about it. He then said he would have to exchange if he traded. I do not think we ever
183 spoke after that about his purchase or exchange of property.

Q. Is it not true that in all conversations touching the removal of his family to this city, between you and Mr. Benjamin, that he made it a condition of such removal that he should succeed in exchanging his property in Missouri for property in this city?

A. I do not think Mr. Benjamin ever spoke about his family at all in any particular conversation. I do not think he did. I do not think there was anything ever said about that at all in one way or the other.

Q. Was any allusion ever made by Mr. Benjamin touching his purpose of removing to this city, unless it was accompanied with the qualification of the exchange of property?

A. He never spoke about the exchange of property to me, excepting incidentally in connection with swapping for my property, and telling me that he had exchanged it for others, and after-
184 wards saying that it had failed.

Redirect examination by Mr. WORTHINGTON:

Q. At the time he told you that he wanted to buy the Ordway lot and build a house there, did he say that absolutely or qualifiedly?

A. There never was any qualification about that. He said he would build a fine house for himself.

Q. Was there any qualification in that excepting the fact that if he bought a lot?

A. The idea he conveyed to me was that he had built the finest residence in Northern Missouri, and he proposed to build one here that would be as handsome as any in the city of Washington—not so expensive, but as handsome; and he thought he could build it on that ground better than anywhere else.

Recross-examination by Mr. CHRISTY:

185 Q. Were you of the same political faith with Mr. Benjamin?

A. Yes, sir.

Q. And you sympathized with him in his troubles?

A. Yes, sir.

Q. Do you know the fact that Mr. Benjamin returned to Missouri each year to vote?

A. I do [not] know anything at all about it. If he did I do not know anything about [it].

HAWKINS TAYLOR.

186 *Testimony of Geo. T. Smallwood.*

GEORGE T. SMALLWOOD sworn and examined by Mr. WORTHINGTON:

Q. Please state your residence and occupation, Mr. Smallwood.

A. My residence is Washington, in the county.

Q. How long have you lived here.

A. Ever since and before the war. I was here before the war, but during the war I was away.

Q. Your business?

A. Real estate.

Q. Where was your office in 1874 to 1876?

A. 515 7th street.

Q. Did you know the late John F. Benjamin?

A. I did.

Q. Slightly or intimately?

A. I was doing business with him nearly every day.

187 Q. During what period?

A. From the time he commenced with Bigelow until within a month of his death.

Q. What, if any, conversation did you have with him during that period in reference to his place of residence?

A. Well, he spoke to me about selecting property to build upon, or to find property or a building that I thought would suit him for a residence. I called his attention to several pieces of property and went with him to examine them. Among them are William Stickney's, 6th and M; Michael Green's, L and 13th, and one house nearly finished by Wm. P. Roose, on Vt. Ave. near Iowa Circle. These are the only pieces of property that he went with me to examine. The other pieces that I called his attention to did not seem to suit him. He made a very thorough examination of those pieces of property. He made an offer for the property of Michael Green, but it was sold.

188 Q. Were the places that he proposed to buy fine residences?

A. They were.

Q. You say he spoke about wanting a fine residence or a fine house for a residence. In what way did he speak to you—as a real estate agent?

A. Yes, sir.

Q. Did he say anything to you as to where he intended to reside permanently?

A. He did; he said he intended to make Washington his residence.

Q. What, if anything, did he say about living in Missouri?

A. I do not know that he ever said anything about Missouri to me. I don't remember.

Q. You say he intended to make Washington his residence. Did he say how long he intended to reside here?

A. No, sir.

Q. Was his statement that he intended to reside here for a definite or indefinite period?

A. No, sir; nothing was said about it.

189 Q. How long did you act as his agent in trying to get property here for him?

A. About two years at least.

Q. Why did you then cease?

A. Well, I got discouraged; I could not suit him.

Q. Did he ever countermand the direction he had given you to find such a residence?

A. No, sir.

Q. State what, if anything, he ever said to you about going back to Missouri to live.

A. I do not think the subject was ever mentioned; my intercourse with him was more of business intercourse, just for a few minutes whenever I was in his office, and strictly upon business.

Q. When he authorized you to buy a lot to build a house on did he speak to you about building a house, or was it for something else?

A. He spoke about a lot that he wanted to buy, and authorized me to make an offer [of] $1.25 per foot. He wanted a south-

190 east front, and thought that was the best front, and he wanted me to see Ordway and make him a offer of $1.25 per foot for the lot on the southeast front of the Capitol; it was the corner lot and a fine lot. I found that Ordway was in New York at the time, and as I learned that he had refused a little higher offer than that I did not make the proposal at all.

Q. Did Benjamin direct you to close the contract if you got the property at that price?

A. He did.

Q. Did he say that he proposed to build immediately if he got the lot?

A. He did not. He said he wanted the lot to build upon.

Cross-examination by Mr. CHRISTY:

Q. You knew Mr. Benjamin until his death?

A. I did not see Mr. Benjamin for about two weeks before
191 his death. Up to that time, from my first acquaintance with
him, I saw him regularly when he was in the city.

Q. Did he ever speak to you during your acquaintance with him of a financial loss that he had met with.

A. I do not think he ever spoke to me directly about it. I remember hearing him converse with gentlemen about such a matter, but I paid no attention to it. But to me directly, I think, he never mentioned it.

Q. After this conversation, to which you allude, did Mr. Benjamin speak to you about purchasing any property in this city?

A. After what particular conversation?

Q. After this last conversation did he speak to you about purchasing, or were not his instruction- to you to effect an exchange if possible.

[A.] I do not remember that he ever spoke of an exchange, and as to what might have been said after the conversation. I could
not remember the dates, because I never charged my mind
192–202 with the matter at all.

Q. You do not now remember that Mr. Benjamin, after this conversation, again spoke to you about purchasing either the Ordway or any other property for him?

A. No, sir.

GEO. T. SMALLWOOD.

Adjourned to Feb. 5, 1880, at 10 o'clock a. m.

Feb'y 5, 1880.—Adjourned subject to call of register.

203 *In re* Estate of JOHN F. BENJAMIN.

SATURDAY, *February* 14, 1880.

Met pursuant to call of register.

Present: Mr. A. S. Worthington, for Mrs. Guy H. Allen and George C. B. Rowan; Hon. R. P. Lowe, for George H. Benjamin *et al.*, heirs of John F. Benjamin, and Mr. Job Barnard, for George Truesdell, executor, and also for John W. Miller, executor of Diana Benjamin.

Mr. Register Webster states that he has been officially informed by Mr. Christy, heretofore representing Ennis, the executor of the estate of J. F. Benjamin in Missouri, that he has withdrawn from the case, and has now — further interest therein.

Testimony of D. B. Hasbrouck.

DANIEL B. HASBROUCK, having been duly sworn, testified as follows:

By Mr. WORTHINGTON:

Q. Please state your age and residence.

204 A. I am 61 years of age; residence, Brooklyn, New York.

Q. And your occupation?

A. At present I am unoccupied.

Q. Are you related to the late Dianna Benjamin, wife of John F. Benjamin, deceased?

A. Her brother.

Q. Were you acquainted with her husband?

A. I was.

Q. Did you see him in the last years of his life?

A. No, sir.

Q. Were you in Shelbina, Missouri, about the time of Gen. Benjamin's death, March, 1877?

A. I was there after his death.

Q. How long after?

A. Some four or five days; I was at his funeral there.

Q. How long did you remain in Shelbina after his funeral?

205 A. Some three or four days.

Q. Were you there again before Mrs. Benjamin's death?

A. I was. The latter part of May, 1877, in response to a dispatch from Shelbina. I went with my wife and remained there until Mrs. Benjamin's death; we were there, I think, some two or three weeks.

Q. And then, after her death, you returned to Brooklyn?

A. Yes, sir.

Q. On the occasion of your visit to Shelbina in March, 1877, where did you stop?

A. At Gen. Benjamin's house, Vesper Place.

Q. While there did you see any letters written by Gen. Benjamin to his wife?

A. I saw in the possession of his wife a file of letters from her husband in Washington, or what appeared to be letters, which 206 she kept under her pillow, and from which she read some extracts to me.

Q. Did you read the letter yourself, or any of them?

A. I have no distinct recollection of reading them myself. She seemed to keep them near her, and, I think, read portions of some of the recent letters.

Q. Do you know anything about the destruction of those letters?

A. No, sir; I do not; I only know that Mrs. Benjamin, as well as the General, had a habit of preserving thousands of letters of very ancient date.

Q. On your next visit, at the time of Mrs. Benjamin's death, did you see any of those letters from Gen. Benjamin to his wife?

A. No, sir; I did not.

Q. State whether at any time you took away any letters from Gen. Benjamin to his wife.

A. Shortly after I returned, after Gen. Benjamin's death, I 207 received from Mrs. Benjamin two letters of his about his personalty here, which she sent me in view of my coming to Washington, and she sent them them to me, as it would appear from the letters themselves, because of one sentence about his personal matters here.

Q. Have you those two letters?

A. I have them ; yes, sir.

Q. Please state their dates.

A. One is dated February 4th, 1877, and the other February 18th, 1877.

(Counsel for Mrs. Allen offers these two letters in evidence and they are herewith filed, marked, respectively " Exhibit D. B. H., Nos. 1 and 2.")

EXHIBIT D. B. H., No. 1.

WASHINGTON, D. C., *Feb.* 4, '77.

DEAR DIANA : Have no letter from you since mine of Wednesday; but, as your familiar hand appeared on the envelopes covering the
Globe and Herald received yesterday, I am encouraged to
208 believe you are not sick. I was in hopes of receiving a letter
from you to-day that you were yourself again.

My neuralgia still lasts. Yesterday and last night I suffered terribly. It seems more stubborn than any attack I have ever had. The weather the past week has been pleasant, but that seems to make no difference. I have taken quinine—no good.

At this writing the Presidential question is as uncertain as on the day of election. I think, though, ere another week passes the thing will be pretty well settled. Each party still sanguine. There is no excitement here and the final result is much desired by all parties.

I have not been to the Capitol this winter.

Business still slow, but every day gathers in something. I have now $28,000 housed. I hope the settlement of the Pres't muddle will improve things, as it doubtless will.

Lovingly, JOHN.

209 EXHIBIT D. B. H., No. 2.

WASHINGTON, D. C., *Feb.* 18, '77.

DEAR DIANA : The end is near at hand, and I can safely to-day congratulate you upon the election of Hayes and Wheeler. I have thought for the first time that such would be the result finally, but feared that trickery, fraud, & force would defeat it finally. Believing them elected, I was opposed to the commission, for the reason that it was unconstitutional and a bartering away of rights. As it is probably it is better the commission was created. The Dems. with great unanimity believed they would win. Davis was their expected 5th judge. They are in a great rage here, but, being used to crow, they will take this most nauseating of all the doses they have ever taken. Wonder how Reed will relish it?

Nothing left them but Oregon, and I hardly think, in the face of recent developments from that State, they will make much of a fight over it. It is a most damning affair on Tilden and his immediate
friends. Therefore, soon after this reaches you, the result will
210 be announced, and on the 5th March Hayes will be inaugurated Pres't U. S.

" The best laid scheme of mice and men gang aft aglee." After all the exulting bombast and sich to their have to take to their holes for another four years is most humiliating. "Apples of Sodom," truly. Sich is life.

I am better of neuralgia. The weather continuing pleasant, which is favorable, I hope soon to be rid of it. You ask me if I ain't impatient. Yea, verily. I have hope, now the election [is] settled, I will collect more rapidly. I am doing it as fast as possible; $1,500 gathered in the past week.

Hope you are getting better and I will hear soon of your entire recovery.

Love. JOHN.

Q. State whether you have at any time had in your possession any letter from Gen. Benjamin to his wife written in the last years of his life except these two.

A. These are all that have ever come into my possession.

211 Q. State whether at any time you yourself read any letter from General Benjamin to his wife written in the last year of his life, except these two.

A. I do not think I ever did. I have no recollection of ever having in my possession, or of ever reading myself, any others. As I have already stated, to the best of my recollection his wife read some portions of one or two or more recent letters of his.

Q. State, as nearly as you can remember, the contents of those letters which Mrs. Benjamin read to you, or the substance of them as she read them to you, so far as they related to his closing up his business here or going to Missouri, either temporarily or permanently.

(Objected to by Mr. Lowe on the ground that it has not been shown that the letters have been destroyed.)

A. I have no distinct recollection of anything, except that she read one or two passages from the later letters in regard to his financial matters here. The letters were mostly of the character of these
212 two letters that have been produced containing political gossip, and there would be an occasional paragraph about his business matters; and all that I remember is a passage to the effect that he had had a good deal of hard work here, and was in hopes to have pretty soon enough "housed" (that was his word) to secure their future. Those letters, after her death, were left there in the possession of Mr. and Mrs. Miller, who resided in the house.

Q. What, if anything, did she read from those letters as to his return to Missouri?

A. I heard nothing read that I remember.

Q. State whether you yourself received any letter from Gen. Benjamin in the latter years of his life.

A. I did not.

Q. Had Gen. Benjamin any children?

A. He had not.

Q. When did he marry your sister?

A. In 1840, or in the winter of 1840–'41.

Q. Where was he living then?

213 A. At Liverpool, Onondaga Co., New York.

Q. Do you know whether or not he was raised in New York and had lived there up to that time?

A. He was born and raised in that vicinity.

Q. About what was the furniture worth in Vesper Place, if you know?

A. From $4,000 to $5,000, or possibly more than that; that would be only a rough estimate.

Q. I will ask you whether, to your knowledge, at any time, George H. Benjamin had access to the letters which were at Vesper Place written by Gen. Benjamin to his wife, or whether he had any opportunity of taking away any such letters.

A. Mr. Benjamin was in and out of the house in April, 1879, when he was there.

214 Q. Were the letters from the General to his wife still in existence at that time?

A. I do not know.

Q. You do not know when those letters were destroyed, if they were destroyed at all?

A. No, sir.

Cross-examined by Mr. LOWE:

Q. Were you there in April, 1879?

A. Yes, sir; that was the time of the trial.

Q. Did you go through the house and see all the furniture, so that you are able to form an opinion now as to its value?

A. Yes, sir.

Q. How large is that house? How deep and how wide?

215 A. It is a double house on the ground; I should say it is about 40 feet front, or possibly 45 feet, and running back 50 feet, with a two-story rear extension besides.

Q Just give a general description of the character of the furniture. The house was carpeted, was it?

A. Yes, sir.

Q. What sort of chairs, sofas, and other furniture?

A. The house was carpeted with Brussels carpet in the first and second stories throughout, and the furniture was what would be called fine furniture in Washington; the parlor furniture was quite elegant, and the furniture in the sitting room was good; as to the furniture in the second story, the bedsteads were expensive, and all the appurtenances were what would be called handsome. After his death policies of insurance were sent to me for my guidance, and I had them renewed; he had $5,000 insurance on the furniture alone and $13,000 on the house.

216 Q. Where were you living at the time you say you went to Missouri and had this interview with Mrs. Benjamin?

A. In Brooklyn.

Q. Did I understand you to say you were related to Mrs. Benjamin?

A. She was my sister.

Q. Was her name Diana?

A. Yes, sir.

Q. Did you go to visit your sister in Missouri during the time Mr. Benjamin was here?

A. No, sir.

Q. Do you know whether she continued to reside in Vesper Place during the time he was here?

A. So far as I know she was there during the time he was in Washington.

Q. You are acquainted with the handwriting of John F. Benjamin?

A. Yes, sir.

Q. (Handing witness a letter.) I wish you would state
217 whether that is his handwriting.

A. Without professing to be an expert, I should say that it is.

(The letter is offered in evidence by Mr. Lowe. Mr. Worthington objects to the introduction of the letter in evidence on the ground that it is not proved that it was ever sent to Mrs. Benjamin. The letter is marked "Exhibit R. P. L., No. 1.")

Exhibit R. P. L., No. 1.

Washington, *June* 11, '76.

Dear Diana: Your letter of the 8th reached me yesterday, and the Herald to-day. I wrote you on Wednesday. I send you with this a photograph of the safe. I have given orders to make it $500.00. It will not be exactly like the photo, but similar to it. It will not be the same size, but 1 inch shorter, 6 inches higher, and 3 inches narrower. This is a picture of one made for a gent in San Francisco. When in its place I will feel much easier as to the security of valuables at home.

I have made a loan of $10,000 to a gent in Glascow, Mo.
218 It has been in negotiation for some time. It is to Mr. Keebaugh, brother-in-law to Mr. Roper. I think it is a safe and desirable investment. The papers are not received by me yet. I got a letter from him on Friday that they were expressed, and I expected them yesterday (Saturday). Doubtless I will get them to-morrow. If there is no hitch in the matter (and I apprehend none) it will dispose of that much of my funds satisfactorily. I have two good indorsers—Mrs. Lewis, widow of my old friend, B. W. Lewis, and James H. Lewis, both very wealthy, and, in addition, $12,000 Howard county bonds, worth to-day in the market the amount of the loan. I gave him the privilege of from 2 to 5 years' time. Don't know yet which he takes. Int. 10%, semi-annually.

Business the past week has been first rate. Except for paying for the safe I will, during this month, have reached my limit, $80,000, making no allowance for losses, of which I must expect some, especially in the Valley Bank. I have written Parsons to ascertain what the two lots back of us can be got for, if at all. I want the two that
219 I may construct a dam on *on* the road and make a large pond.
I must have a water-works that can be brought into use in

in the dry times; we suffer so much from — in Mo. I can construct something from which one entire lot can be irrigated. It will certainly be nice to be able to count on fruits and vegetables regardless of dry weather. My gains from henceforth will be devoted to sich. The weather here very warm; a good shower yesterday, but the air no cooler; hope the shower reached you. From what you say I expect the court-house played out. Nothing from Burdett yet.

Lovingly yours, JOHN.

Q. Had you not visited Missouri some time before Gen. Benjamin's death?

A. No, sir; I had never been to the State of Missouri before. I was summoned there peremptorily by telegram from her advising me of his death here. She had visited Syracuse, New York, where I met her several times.

Q. Were you subpœnaed to come here from Brooklyn to testify in this case?

A. No, sir.

220 Q. You were here in Washington on other business of your own?

A. Yes, sir.

Q. Were you here in Washington during the two or three years that Mr. Benjamin was doing business here?

A. No; I did not happen to be here during that time.

Q. How did you happen to get those two letters that you have produced here as evidence in this case?

A. Mrs. Benjamin sent them to me for the purpose of enlightening me as to his business matters here, calling my attention to a single paragraph in one of them. I think there is nothing else, only in regard to his business matters. I was coming to Washington and she sent them to me with a letter in regard to his personalty here, some time in March, 1877.

Q. Did you come here to see about that business?

A. Yes, sir.

Q. How long after his death?

A. On my return home from Shelbina I came by the way of Washington?

221 Q. You had not those letters at that time, had you?

A. No; they were sent to me by mail some time after I reached Brooklyn. I was here again in June, 1877, by appointment with Mr. George Benjamin.

Q. Did you exhibit those letters to any one when you were here at that time?

A. I do not know that I did. I think I showed them to Mr. Bigelow.

Q. How did you happen to bring them down with you to Washington this time; you came on for business and you knew nothing about this examination going on, did you?

A. Yes, sir; I knew about this examination.

Q. Were you requested to bring those letters?

A. Yes, sir; at least I was requested to bring any letters from Mr. Benjamin to his wife, if I had them.

Q. By whom?

A. By the counsel.

222 Q. By Mr. Worthington?

A. By Mr. Worthington or Mr. Barnard; I think Mr. Barnard made the suggestion. I ought to say that I had been instructed by Mr. Miller and by my own counsel in Shelbina to look after this proceeding here.

Q. You have some interest in this controversy going on here?

A. I think that appears already; I am the brother of the deceased lady.

Q. Are you interested in sustaining or in overthrowing the will that was made by Mr. Benjamin?

A. I am legatee under Mrs. Benjamin's will.

Q. Then you are interested in sustaining the will?

A. I suppose so, sir.

Q. Do you know of any other matter pertinent to this case?

A. I do not.

DANIEL B. HASBROUCK.

223 *Testimony of Geo. Truesdell.*

George Truesdell recalled and further examined by Mr. Worthington:

Q. You have already testified that your office was in the same room with Gen. Benjamin's bank in the latter years of his life?

A. Yes, sir.

Q. And that you were well acquainted and had frequent conversations with him about business?

A. Yes, sir.

Q. Let me ask you whether you had any opportunity during the last year of his life of knowing what was the situation of the affairs of Bigelow and Benjamin in reference to closing it up, or going on with it under the articles of partnership; if so, what were those opportunities?

A. Our business relations were somewhat intimate, and, as I have already stated heretofore, I had frequent conversations with Gen. Benjamin upon business matters generally. Several times 224 after he commenced business here he showed me a statement of the profits of their business for the current quarter; I knew the kind of business they were engaged in, and knew from Gen. Benjamin about the amount of money that he had invested.

Q. Do you know whether or not he made periodically a memorandum statement of his financial affairs?

A. He did.

Q. How do you know?

A. I found such a memorandum among his papers after his death.

Q. Did you know anything before his death about his making such a memorandum?

A. No sir; I cannot say that I knew it, so far as his making a private memorandum was concerned. The statement of the quarterly dividend which he showed me I know was the dividend made by the firm.

Q. Have you with you the memorandum which you speak of?

225 A. I have.

Q. As executor, you came into possession of his papers here?

A. I did.

Q. And you found this memorandum among those papers, as I understand you?

A. I did.

Q. In whose handwriting is it?

A. Gen. Benjamin's.

Q. Have you any objection to filing the original paper as evidence?

A. I would prefer not to file the original paper; I have no objection to showing it at any time to any one who wants to see it.

Q. Have you compared this copy with the original?

A. Yes, sir.

(Counsel for Mrs. Allen offers in evidence a copy of the state-
226 ment above referred to, which is here filed, marked "Exhibit
G. T., No. 1;" he also submits the original document and the copy to counsel for Geo-ge H. Benjamin for inspection.)

Exhibit G. T., No. 1.

Feb. 1, '76.		March 1, '76.		April 1, '76.	
Bank	50,000	Bank	50,000	Bank	36,000
St. L.	2,000	St. L.	2,000	St. L.	2,000
Notes	23,890	Notes	21,790	Notes	26,550
Cash	640	Cash	3,430	Cash	13,450
Profit	470	Profit	650		
	77,000		77,870		78,000

May 1, '76.		June 1, '76.		July 1, '76.	
Bank	36,000	Bank	36,000	Bank	40,000
St. Louis	2,000	St. Louis	2,000	St. L.	2,000
L. Johnson	15,000	Notes	24,140	Notes	26,250
Notes	20,075	Johnson	15,000	K.	10,050
Cash	5,025	Cash	1,650	Cash	2,380
Profit	450	Profit	780		
	78,550		79,570		80,680

Aug. 1, '76.		Sept. 1, '76.		227 Oct. 1, '76.	
Bank	40,000	Bank	40,000	Bank	40,000
St. L.	2,000	St. L.	2,000	St. L.	2,000
Notes	28,735	Notes	23,620	Notes	22,045
K.	10,140	K.	10,220	Cash	3,735
Cash	400	Cash	5,680		
Profit	440	Profit	480		
	81,715		82,000		67,780

Nov. 1, '76.		Dec. 1, '76.		Jan. 1, '77.	
Bank	40,000	Bank	40,000	Bank	40,000
St. L.	2,000	St. L.	2,000	St. L.	2,000
Notes	16,550	Notes	17,120	Notes	13,780
Ridge	2,000	Ridge	2,000	Ridge	2,000
Cash	6,990	Cash	1,050	Cash	325
Profit	160	Profit	400	Bonds	10,000
		Bonds	5,350	House	1,000
				Int.	140
			67,920		
			30		
	67,700		67,890		69,245

Feb. 1, '77.		March 1, '77.	
Bank	40,000	Bank	34,500
St. L.	2,000	St. L.	2,000
Notes	11,070	Notes	11,440
Ridge	2,000	Ridge	2,000
Bonds	10,000	Waters	3,000
R. E.	2,000	Bonds	12,000
Int.	205	R. E.	2,000
Cash	2,125	Int.	310
		Profit	50
		Cash	2,450
	69,400		69,750

228 Q. Since Gen. Benjamin's death have you, as executor, examined the books and papers of the firm carefully?

A. I have.

Q. From your knowledge of the affairs of the firm before his death and from your examination of the papers since are you able to state whether or not the affairs of the firm were in process of being closed up at the time of his death, or what was their condition?

A. There is no indication that I recall that the affairs of the firm were being closed up. The capital of the firm, I think, had been somewhat reduced some time before Gen. Benjamin's death. Further than that there is nothing to indicate any closing up.

Q. Without reference to your subsequent examination of the papers can you state whether or not at the time of his death the business of the firm was in full operation?

A. Yes, sir; it was in full operation.

229 Q. During the last three or four months of Gen. Benjamin's life what, if anything, did he say to you or in your presence in reference to going to Missouri, either on a visit or to stay?

A. My impression is that a short time before he died he told me his wife was sick and he was going out to Missouri. I do not remember any further that he ever said — upon the subject.

Q. Please look at these tax-bills which I hand you and state whether you recognize them; and, if so, where you first saw them.

(Counsel here hands to the witness tax-bills as follows: One dated October 22nd, 1875, for $50.40; one dated October 25th, 1876, for 36.25, and one dated December 25th, 1876, for 146.12; to which latter is appended a draft of the same date for the same sum drawn on John F. Benjamin at Washington by John Dickerson, collector.)

A. I first saw them among the papers of Gen. Benjamin which came into my possession after his death.

230 Q. In whose handwriting, if you know, is the endorsement on the back of this draft—the words Bigelow & Benjamin?

A. The words "Bigelow & Benjamin" look somewhat like the writing of Gen. Benjamin--more particularly the word "Benjamin"—though I would not like to swear that that is his handwriting.

(These bills are offered in evidence by counsel for Mrs. Allen, and marked, respectively, "Exhibits G. T., Nos. 2, 3, 4.)

EXHIBIT G. T., No. 2.

TOWN OF SHELBINA, MISSOURI, *Oct. 25th*, 1876.

Received of John F. Benjamin thirty-six $\frac{25}{100}$ dollars, being the amount of corporation taxes levied by said town on the following-described property, situated therein, for the year 1876, viz:

Parts of sections.	Sec.	T'w'p.	Range.	$	Cts.
Out lot No. 48, valued @ $6,000	----	----	----	36	25
All other property 1,250					

R. BRANHAM, *Collector.*

231

EXHIBIT G. T., No. 3.

TOWN OF SHELBINA, MISSOURI, *Oct. 22d*, 1875.

Received of John F. Benjamin fifty $\frac{40}{100}$ dollars, being the amount of corporation taxes levied by said town on the following-described property, situated therein, for the year 1875, viz:

Parts of sections.	Sec.	T'w'p.	Range.	$	Cts.
Out lot No. 48	----	-----	------	48	00
Personal property	----	-----	------	2	40
Total	----	-----	------	50	40

D. J. LEFFEL, *Collector.*

232 EXHIBIT G. T. No. 4.

STATE OF MISSOURI,
County of Shelby, } *ss:*

SHELBYVILLE, MO., *Dec.* 25, 1876.

Received of J. F. Benjamin one hundred forty-six $\frac{12}{100}$ dollars, being the amount of State, county, and special taxes assessed for the year 1876 on the following-described property, situated in said county, as the same appears upon the tax-books of said county for said year:

Acres.	100ths.	De-cription.	Value.	Sect'n, lot.	T'w'p, brock.	Range.		Doll's.	Cts.
		Shelbina.					State tax	30	04
							County tax	37	55
5	---	Out lot	6,000	48	--	---	Road tax	---	48
160	---	N. E., S. W., & E. N.					County-int. tax	3	75
		W. & N. W. N. W.	160	9	58	12	Poor-farm tax	3	76
							School tax	70	54
		Personal property	1,350				Penalty		
		Total valuation	7,510				Total tax	146	12

JOHN DICKERSON, *Collector.*

233 $146.12. SHELBINA, MO., *Dec. 25th,* 1876.

At sight pay to the order of Wm. A. Reidley one hundred & forty-six $\frac{12}{100}$ dollars, value received, and charge same to account of — with exchange.

JOHN DICKERSON,
Collector.

To John F. Benjamin, Washington, D. C.

Endorsed: Bigelow & Benjamin. Wm. A. Reidley.

234 Q. Since Gen. Benjamin's death have you been in the house at Vesper Place and made a general examination of the house and contents?

A. I have.

Q. Can you state approximately what is the value of the furniture in that house?

A. I remember that the house was a large one, and appeared to be well furnished with expensive furniture. I gave the matter no thought at the time I was there as to the value of the furniture, and I do not think I could approximate the value.

Q. Can you state whether or not it would exceed $2,000?

A. I should think it would. I should think the furniture in the house might have cost considerably more than that.

Q. Please look at the exhibits attached to the deposition of B. F. Dobbins, taken in this case at Shelbyville, Missouri, marked "Exhibits Nos. 1, 2, 3, 4, 5, and 6," being letters from M. Y. Duncan, of Mexico, Missouri, to John F. Benjamin, and state whether you have ever seen them before; and, if so, where.

235 A. Some of these exhibits Gen. Benjamin showed to me soon after their receipt by him, and the whole of them I found among his letters after his death. I think I gave them to Mr. Worthington.

Q. Can you identify those, or any of those, which he showed you in his lifetime at the time of their receipt?

A. I think I can, perhaps one or two of them. I think I can identify No. 1.

Q. Please state how you identify it.

A. By the description of the property and the conversation that took place between Gen. Benjamin and myself at the time he showed it to me.

Q. What was that conversation?

A. It was merely that he had had the offer to exchange. I cannot remember whether it was after he received that letter or one of the others that he told me if he effected the exchange he
236 would sell the property to me or my brother. He showed me the letter.

Q. That is, the property he was to get in exchange for Vesper Place?

A. Yes, sir; the property which this man Duncan proposed to exchange for his Vesper Place house.

Q. You state positively that it was some time during the negotiation with Duncan that he made this statement to you?

A. O, yes.

Q. Please state whether you can identify any of the other of these letters as having been shown to you by the General at the time he received them.

A. I think Exhibit No. 4 was shown to me by General Benjamin soon after its receipt.

Q. Please tell us what is the foundation of that statement.

A. I think I recognize it from the description of this property in Mexico which this letter contains.

237 Q. This conversation, then, was about the time your brother was here proposing to locate in the West?

A. I am unable to say whether that is so or not. At some time while Gen. Benjamin was engaged in business here my brother came down here to make me a visit. He had been writing to me about going West, and particularly into Northern Missouri, to locate. I wrote him that Gen. Benjamin was from that locality, had lived there many years, and could give him a great deal of valuable information, and it was partly on that account that he made me this visit. My impression is that while Gen. Benjamin was negotiating for this property in Mexico he told me that he would sell it to me or my brother, one or both of us; but I am unable to state whether it was both or only one. I had talked some of going West with my brother at that time, and it is impossible for me to state positively which one it was, but I know he spoke to me upon the
238 subject, and said he would sell it to one or both of us.

Q. Aside from what he said to you about selling the property to you or to your brother, did he say anything to you at the time of this negotiation with Duncan as to what he proposed to do with Duncan's farm, if he should have the exchange?

A. I asked him the question what he proposed to do with it, and he told me that he should sell it; that his only object in effecting the exchange was that he thought the farm might be more salable than Vesper Place.

Q. Can you tell us whether this statement was made at the beginning of the negotiations with Duncan, or after it had gone along some time or towards the close of it?

A. I cannot state at what time. It was some time during the negotiation, I should say; perhaps not at the beginning, perhaps not at the close of it.

(Cross-examination waived by Mr. Lowe.)

GEO. TRUESDELL.

239 *Testimony of A. S. Worthington.*

AUGUSTUS S. WORTHINGTON, having been duly sworn, testified as follows:

I am of counsel in this case, as appears by the record. The letters from M. Y. Duncan so John F. Benjamin, which are attached to the deposition of B. F. Dobbins in this case, and marked "Exhibit Nos. 1, 2, 3, 4, 5, & 6," respectively, were handed to me by Mr. Truesdell about two weeks ago, and I sent them by mail to B. F. Dobbins, Shelbina, Missouri. They are all the letters from Mr. Duncan to Gen. Benjamin that came into my possession.

(And further deponent saith not.)

AUGUSTUS S. WORTHINGTON.

240 *Testimony of R. P. Lowe.*

R. P. Lowe, having been duly sworn, testified as follows:

By Mr. Worthington:

Q. You are of counsel in this case for George H. Benjamin?

A. Yes, sir.

Q. When did you obtain the letter dated June 11th, 1876, purporting to be from Gen. Benjamin to his wife, and which you offered in evidence this morning?

A. I received it by mail, enclosed in a letter from George H. Benjamin from Cazenovia.

Q. Did he send you any other letter from Gen. Benjamin to his wife?

A. He did not.

Q. Do you know where he got this one?

A. I do not.

R. P. LOWE.

241 *Testimony of G. C. B. Rowan.*

George C. B. Rowan recalled and further examined by Mr. Worthington:

Q. State whether or not, to your knowledge, Gen. Benjamin, in the later years of his life, was in the habit of making private memoranda periodically of the state of his business affairs in Washington.

A. He was. He kept a regular balance-sheet, as it were, every month, of his private business, including his interest in the bank, and also his private business outside of the bank. He was wont to say that he kept but two or three books, yet he could tell any moment how his affairs stood from his private memorandum-book, which he carried in his pocket, and from one or two books which he had at home.

Q. (Handing witness the original paper, of which "Exhibit G. T., No. 1," is a copy.) Please look at this paper and state whether you recognize the handwriting.

A. It is the handwriting of John F. Benjamin.

242 Q. Do you remember seeing that paper during his lifetime?

A. If not this one, I have seen similar ones.

Q. At what time did he make these statements?

A. Usually about the last of each month.

Q. Please look at the entry in that memorandum, dated February 1st, 1876, and explain to us what each of the items in that memorandum is.

A. In the first place, "Bank $50,000," means his half of the capital which he had interested with Bigelow & Benjamin."

"St. Louis, $2,000," means $2,000 worth of stock in the Valley National Bank of St. Louis.

"Notes" means the bills receivable which he had on his private accounts, most of which, if not all, were deposited for collection with Bigelow & Benjamin.

"Cash"—that is about what his balance was in the bank at that time, and in his pocket, &c. It is probably not accurate, because
he has got it down in round numbers.
243 "Profit"—that could not have been his whole profit during the month; I do not know what that refers to.

Q. Please pass to the entry under date of April 1st, 1876; the first item there is "Bank, $36,000;" tell us, if you know, what was the cause of the falling off from $50,000 in February to $36,000 in April?

A. He withdrew from his amount that he had in the bank $14,000. The partners were in the habit of drawing from the capital when they wanted money, and making deposits to their credit; his cash is increased thereby, and the books of the bank would probably show the exact amount withdrawn and the exact amount placed to his credit.

Q. Do you know what was the occasion of his withdrawing that $14,000? Do you remember anything about the arrangements between him and Bigelow in reference to the matter at that time?

244 A. I think that at that time, although I am not sure, his capital in the bank was larger than Mr. Bigelow's—the books of the firm, of course, will show that—and he thought that he would make them alike, and he also thought of making an investment in some Missouri State bonds—that is, loaning upon them at 10 per cent. for three or five years, I have forgotten which, which at that time was considered a very advantageous loan. Besides the bonds he had on the note as security the names of three wealthy men, I think, in the West.

Q. Who was the person to whom he made this loan?

A. A man by the name of Keebaugh.

Q. Pass to the entry dated May 1st, and state, if you know, what is meant by the item there—L. Johnson, $15,000.

A. I do not remember that, but I think he deposited that money there for some purpose.

245 Q. The money which he proposed to invest in those Missouri bonds?

A. Yes, sir; whether it was because he was going away and did not wish to have his money all in one place, or did not wish to have so large an amount of cash in our vault, I do not remember.

Q. Please pass to the date of the next entry, July 1st, 1876, and state what is meant there by "K., $10,050."

A. That is the amount he had there invested; I think it was $10,000; perhaps the $50 was the interest he had added to it as part of the profits. The notes, I presume, are in the possession of Mr. Truesdell, the executor.

Q. Please look at the entries for September 1st and October 1st, 1876. September 1st, 1876, there is an entry, "K., $10,220," followed by "Cash, $5,680;" while in the entry of October 1st, 1876, the item as to "K." is dropped entirely, and the "Cash" is reduced to $3,735; and the total is reduced from $82,000 in September to

$67,780 in October. Please state what is the cause of the
246 difference there.

A. About that time he made another loan to Keebaugh upon the same security and the same names for $5,000, I think, and shortly after discovered that both notes were forgeries, and the bonds were forgeries, and the whole $15,000 was gone. He had made the loans to Keebaugh without any very great examination, because he had known Keebaugh from his youth, and made him what he was, and got him his wife for him, and was very proud of him, and spoke of him frequently. It was purely accidental, I think, that he discovered the forgery by sending some of the coupons, I believe, to be collected. A short time after the discovery Keebaugh sent the money to pay them. That is my recollection now.

Q. State whether about the same time in the fall of 1876 the firm of Bigelow & Benjamin sustained any loss in consequence of the operations of Charles H. Moulton, a broker, who absconded from Washington about that time?

247 A. They did. They sustained some considerable losses and were compelled to take large quantities of real estate to help make up their losses.

Q. Let me ask you whether, about the time of these losses through Keebaugh & Moulton, Gen. Benjamin said anything to you or in your presence about his change of plans for the future, growing out of these transactions?

A. I think not. I do not think he had ever thought of leaving Washington and returning to Missouri for that reason. You will see that outside of his capital $25,000 of his private money was invested in notes of different kinds, small ones usually, and he was realizing a very large percentage on them—very large—far more than the legal rate of interest, and he could not get but 6 per cent. in Missouri; according to my recollection he said that that was the rate allowed by law there, and then the taxes were very high there.

Q. When was it he said these things to you?

248 A. At different times during 1876 and the fore part of 1877.

Q. Do you remember his last trip to Missouri in October, 1876?

A. Yes, sir; I remember his going out there; I think it was from political motives that he went that time.

Q. Why do you think that?

A. He had been in Congress for a number of terms; had quite a considerable political influence here, and there were a great many politicians coming in to see him constantly, and they wanted him to be renominated for Congress; and from what he said about it I think at one time he thought seriously of making an effort for renomination; I do not remember, of course, his different statements about it.

Q. How long was that before his death?

A. That was at least 6 months before his death.

249 Q. After his return from Missouri, in the fall of 1876, what, if anything, did he say indicating a change of that intention?

A. He dropped it completely; it was a subject that he did not seem willing to talk about; he rarely, if ever, alluded to it, and seemed disgusted with politics.

Q. For a few months before that he had alluded to it?

A. Frequently, and spoke of his former terms in Congress and of his political friends here and elsewhere, and of the fact that when his last term had expired they wished him to be renominated and he had refused, as he thought he could do better in his private business.

Q. Do you know what occasioned this change in his sentiments at the time of this visit to Missouri in 1876?

A. He occasionally spoke of the change of the feeling out there—that is, it was very Democratic; but I do not know that he had much to say about the subject; I think the subject was dropped.

250 Q. After that last visit to Missouri in 1876 he dropped the subject of seeking a renomination?

A. Yes, sir.

Q. At the time he talked to you about a renomination from that district, do you recollect of hearing anything indicating that he had intended to go back there and live in order to get the renomination, or what was his talk on the subject?

A. No; his object was to be renominated and to be elected, and then reside here principally and carry on his business the same. He was fond of political life.

Q. After his return from that visit to Missouri in the fall of 1876, what, if any, change took place in the nature of his investments here, indicating an intention to stay or to leave here?

A. After his return his investments went on as usual, the only change being that he was a little more careful in his investments
than he had been before Moulton and one Vasco D. Ney ab-
251 sconded. Before that he had been in the habit of discount-
ing a large amount of paper for Ney. Shortly after his return he cut down or reduced Ney's discounts, evidently suspecting that something was wrong, and he kept that up until Ney absconded.

Q. To resume the memorandum: The entry of November 1st, 1876, contains an item, "Ridge, $2,000;" what is that?

A. It is a note of $2,000 that he purchased of a man by the name of Ridge.

Q. In the entry of December 1st, 1876, there is the item "Bonds, $5,350;" what are those?

A. They were 6 per cent. District of Columbia gold bonds which I purchased for him as his agent from Lewis Johnson & Co.; that was at a time when there was very little demand for money; that is, good notes were very scarce at that time.

Q. Before this time he had not invested in District of Columbia bonds at all?

252 A. No, sir; he had invested in no bonds because he could invest his money to better advantage to himself. He bought those, however, below par, at the solicitation of Lewis Johnson & Co., who thought there would be a considerable rise.

Q. In the entry of March 1st, 1877, there is an item of "Waters;" what is that?

A. That was a note of $3,000 secured on real estate on G street, which he bought of Waters.

Q. That note is mentioned in his will?

A. Yes, sir.

Q. I observe that the item of "Bank" in this memorandum is continuous at $40,000 from July, 1876, down to February, 1877, without change, but that the entry for March 1st, 1877, is "Bank, $34,500." Do you remember the occasion of that reduction?

A. He withdrew that money, I think, partly to buy the notes of Waters, and *and* also for his account; I think his account was short
at that time, and he wanted the money to use for some pur-
253 pose or other. Or it may have been that he did it to equal-
ize his account with Mr. Bigelow's. But the book will show
that. He usually had more capital invested in the business than Bigelow; that is, more actual capital.

Q. During the last few months of the General's life were you at the bank every day?

A. Yes, sir.

Q. And knew all about the inner workings of the bank business?

A. Yes, sir.

Q. Up to the time of *of* the General's death had any change been made in the business arrangements between him and Bigelow as evidenced by the partnership agreement except the withdrawal from the firm of the moneys you have mentioned?

A. No, sir.

Q. Was Gen. Benjamin, up to the time of his death illness, in accordance with the obligations of his partnership, giving his undi-
vided attention to the firm business?

254 A. He was, continually. He usually acted as cashier. He
was in the bank almost all the time, and made almost all the loans.

Q. Had there come to your knowledge any information or evidence that the partnership was to be terminated in less than the five years specified in the agreement?

A. No, sir.

Q. Did Gen. Benjamin ever, in your presence, or to you, express any wish to retire from the business within the five years?

A. He never expressed any wish or desire to retire from the business at all. His conversation was quite to the contrary, and he always took an active interest in it.

Q. How was that—particularly in the last few months of his life?

A. About the same. There was no change that I remember now, and I probably would have noticed it if he had thought of closing
up.

255 Q. At the time his last illness began what was the condi-
tion of the firm business with reference to its going on or closing?

A. It had to go on; it could not have closed without very great loss.

Q. You have already testified in reference to a conversation with the General on the last day that he was at the office. Have you any recollection of that conversation any further than you have testified?

A. No; I have not any very distinct recollection, except that he conversed with me about his business and about his accounts. He stayed there as he always did on the last day of the month until the books were balanced, and particularly at the end of the quarter, when the interest account was divided between them, and until all the accounts had been balanced and a balance-sheet struck; so that when he left the office he took with him a memorandum for his private books of the exact amount to his credit and his expenses.

Q. On the 1st of March he was not at his office?

A. No, sir.

256 Q. Were you with the General during his last illness?

A. I was.

Q. In what capacity?

A. As nurse.

Q. He was taken sick on the first day of March and died on the eighth, I believe?

A. Yes, sir.

Q. During that time was he sitting up, or in bed?

A. He was in bed. I saw him on the 1st, and he sat up a little, but after that he was in bed all the time; that is, I never saw him sitting up; he was always lying down when I saw him.

Q. During his last illness did you observe him writing any letters?

A. He did not write any that I know of; I wrote a number for him to his wife.

Q. Did he dictate the words or the substance?

A. He dictated pretty nearly the words.

257 Q. What did you do with the letters after *you* they were written?

A. I mailed them.

Q. To whom?

A. I remember one or two to Mrs. Benjamin, at Shelbina; I do not remember any others.

Q. In those letters what, if anything, did he say about going to Missouri?

A. He expressed great sorrow at her illness, and wanted to have her with him or be with her. He stated that he was very ill, but hoped they could be together before long.

Q. Did he dictate to you anything in reference to his going *to his going* to Missouri to stay permanently?

A. No, sir.

Q. Are you positive on this point?

A. I am quite positive. My impression is that it was to the contrary. The letters, of course, will show for themselves if they can be found. I paid but very little attention to the contents of them.

258 Q. According to your recollections, did he state or dictate anything in these letters in reference to winding up his business here and giving it up?

A. No, sir; nothing at all.

(Mr. Lowe objects to all that the witness has stated alone in reference to the contents of these *of these* letters, as they are not shown to have been lost or destroyed.)

Cross-examined by Mr. LOWE:

Q. Did Mr. Benjamin think that if [he] went back to Missouri and ran for Congress it would be a benefit to his business here; that he could carry on his business more advantageously than if he was not a member of Congress?

A. I think he was very fond of political influence, and thought he could have both here—his business and political influence combined.

Q. That the influence which he would have as a member of Congress would add to his business and would benefit his business. Did he not think that?

259 A. I do not know as to how he expected to benefit his business here. He had a great many applications for assistance in obtaining appointments, and I think he did a great deal for his friends. A great many would come into his office to see him.

Q. Where did he board the most of the time that he was here?

A. He boarded on G St. between 12th & 13th; also on D St. near 2nd, where he died.

Q. Private boarding-houses?

A. Yes, sir; I think he took his meals at the hotels or restaurants, and just lodged at these houses.

Q. He confided strongly in you and consulted you about many of his business affairs, did he not?

A. I do not know that he consulted me a great deal.

Q. Do you know a Mr. Plowman, an architect in this city?

A. I know of him.

Q. Do you know whether Mr. Benjamin employed him to
260 draw a grape-arbor for his Vesper Place in Missouri?

A. I remember that Mr. Plowman did make some drawings for him; it has been some time since the event occurred, and I do not remember what the drawings were.

Q. Did you see the drawings?

A. I did at the time they were made, but I do not remember what they were for.

Q. (Handing witness a drawing.) I will ask you if you have ever seen that drawing by Mr. Plowman.

A. I have seen a drawing by Mr. Plowman; I do not remember that this is the one. There is something familiar about it, however, and it may be the one.

Q. Do you not recollect now by looking at it that it was to be a grape-arbor for Vesper Place?

A. I do not remember what it was to be or what it was to have been. I remember that there was a drawing, and I have an indistinct idea that I have seen the one before me at some time, but how or under what circumstances I do not remember.

261 Q. Did you never hear Mr. Benjamin say that he was going

to make some improvements to his Vesper Place, and that this drawing that Mr. Plowman made was for that purpose?

A. I do not remember his saying so.

Q. You do remember seeing something like this?

A. I remember seeing a drawing that he had, which I think was made by Mr. Plowman, but whether that is the one or not I cannot state. There is something familiar to me in that drawing; I may have seen it in a picture, or anywhere else.

Q. Do you remember what year it was that he showed you this?

A. No, sir; I do not. I should not have remembered the circumstance at all if you had not recalled it to my recollection.

Q. What time did you commence clerking for Mr. Benjamin?

A. On or about March, 1875.

Q. And remained until his death?

A. I remained until some time after his death.

Q. Do you not remember that you saw this in 1876?

A. I do not remember when I saw it.

262 Q. How long had you been there before you saw it?

A. I could not say.

Q. Had you not been there a year?

A. I do not know.

Q. About how long do you suppose you were there before you saw it?

A. I haven't the most remote idea; it may have been a week, or it may have been three years.

Q. He consulted you considerably about his business; I suppose you occupied something of a confidential relation to him, did you not?

A. Yes, sir. He did not consult with me a great deal; I was hardly old enough for that; he may have told me many things confidentially.

Adjourned to 10 a. m., Wednesday, February 18, 1880.

263 *Testimony of Mrs. L. Davis.*

In re Estate of JOHN F. BENJAMIN.

WEDNESDAY, *February 18th*, 1880.

Met pursuant to adjournment.

Present: Same counsel as at the last meeting.

Mrs. LUCRETIA DAVIS recalled and further examined by Mr. WORTHINGTON:

Q. You have previously testified in this matter?

A. I have.

Q. Do you remember any conversation with Gen. Benjamin in reference to a lot which he had bought from Gov. Shepherd?

A. I heard him speak of having bought such a lot.

Q. Did he say anything as to the purpose to which he intended to put that lot?

A. That he should build on it.

Q. Build what?

264 A. That if he built at all he should build a house for a residence; that was his only idea for getting any property in Washington.

Q. When speaking of that lot did he say anything as to the character of the residence he proposed to build?

A. I am not sure that it was at that time, but he said that when he built he should build a house like the house in Shelbina, which he had often described to me.

Q. Can you fix approximately the date of this conversation about the Shepherd lot?

A. It must have been the last winter of his life. I used to talk with him a great deal at the office.

Q. How do you remember that you saw him during that winter?

A. Because I was at the office at least three times a week, and Mr. Benjamin was always there, and I always had more or less conversation with him. My politics were the same complexion as his, 265 and it was a very exciting time, during the Electoral Commission, and he gave me letters of introduction to Mr. Blaine and Gen. Garfield for admission.

Q. I will ask you whether at any time he said to you or in your presence anything as to his intention to return to Missouri to live?

A. Never. My mind was always impressed with the idea that he was going to make his home in Washington; he never said anything to the contrary.

Cross-examination by Mr. LOWE:

Q. When Mr. Benjamin spoke of building on the lot you refer to did he speak of the building as a residence?

A. I never understood it to be anything else except for a house.

Q Did he use the word "residence?"

A. It has been so long ago that I do not know that I could 266 on oath say that he said "residence" or "house." He never talked of building anything else or getting anything else here except a house.

Q. Did he ever use the word "home" in connection with a building here?

A. O, yes. While I cannot fix that he said it on such a day, yet he often spoke from the beginning of making it a home here, and the only thing that kept Mrs. Benjamin there was this "elephant" on his hands, as he called it, his house.

Q. And that whenever he got rid of that "elephant" then he would move his family here?

A. Yes, sir; that was the idea. He always spoke of his wife in affectionate terms, and that it crossed her for them to be separated in this way.

Q. You did not understand, then, that his wife refused to come?

A. Oh, no.

Q. But that he was only waiting to get ready to move here?

267 A. That was all. I have heard him say that she would come whenever he would bring her.

LUCRETIA J. DAVIS.

Testimony of Otis Bigelow.

OTIS BIGELOW recalled and further examined by Mr. WORTHINGTON:

Q. By the evidence already offered in this case it appears that the capital stock of Bigelow and Benjamin was reduced from $50,000 on the 1st March, 1876, to $36,000 on the 1st April, 1876. Please state how that happened.

A. I was owing a large amount of money on which I paid interest, and the times were getting bad for investments, and we mutually withdrew a certain amount, so that I was enabled to pay my indebtedness, and Mr. Benjamin withdrew an equal amount of capital.

268 Q. What amount?

A. It was about $15,000 at that time, I think. The amount was the difference; that is all I can say.

Q. The amount withdrawn was the difference between the capital stock on the 1st March and that on 1st of April?

A. Yes, sir. That enabled me to pay up my indebtedness and make private investments.

Q. And it was about $15,000, as you remember it?

A. Yes, sir; $15,000 or $20,000 was the difference.

Q. At that time was there any agreement between General Benjamin and yourself looking to a dissolution of the firm within the time limited by the agreement between you which is in evidence?

A. No; there was not.

Q. What, if anything, was said between you and him at that time or at any other time about a dissolution of your firm?

269 A. There was nothing said about a dissolution; there was no proposition of that kind.

Q. What agreement or understanding was there, if any, between you and him as to winding up the business without speaking formally of a dissolution?

A. Nothing was said about winding it up.

Q. What was, in general, the character of the business of the firm of Bigelow and Benjamin?

A. The principal business was discounting small paper and carrying securities for people.

Q. Was it not in substance loaning money on interest?

A. Yes, sir; loaning money on interest.

Q. Please state what were the assets of the firm in the early part of April, 1876.

A. (Referring to ledger.) The ledger balances on the 31st April, 1876, show:

	Bills receivable	$69,490 78
	Fixtures	1,500
	Cash	3,271 06
270	Protest account	8 23
	Due from Second National Bank	1,467 02
	Real estate	1,801 18
	Total	$77,538 27

Q. What was the character of the bills receivable as to the number and amount included in this item of $69,490.78?

A. They were principally small.

Q. Please turn to the account and tell me what were the assets of the firm on the first day of February, 1877.

A. On the 3rd February we took the following balance:

Bills receivable	$59,179 76
Expense account	142 98
Fixtures	1,500 00
Cash	9,183 62
Protest account	29 17
Due from Second National Bank	733 82
Real estate	6,667 76
Bonds	6,272 00
Costs	50 00
Total	$83,759 11

271 Q. What was the nature of the bills receivable held by the firm on February 3rd, to the amount of $58,179.76, as to the number and amount of the bills? State generally.

A. The ordinary discounted notes were small; the notes secured by collateral were large.

Q. Were the notes represented by that amount meny or few?

A. There were a good many.

Q. How did it happen that you had so much real estate on hand in February, 1877, when you were not in the real estate business?

A. People became bankrupt and we had to take real estate for the debts.

Q. That is, you sold property under deeds of trust and bought it in to save yourself.

A. Yes, sir.

Q. Now turn to the last account that you have before Gen. Benjamin's death, which was on the 8th March, 1877, and tell us what were the assets then.

A. The balance on March 7th, 1877, shows:

272 Bills receivable	$55,179 81
Expense account	281 48
Fixtures	1,500 00
Cash on hand	3,650 22
Protest account	32 97
Due from 2nd National Bank	727 93
Real estate	6,604 76
Bonds	4,312 00
Costs	63 00
Total	$72,352 17

Q. Up to the time of this entry of March 7th, 1877, state whether there was any change in the nature of your business, or in the extent of your operations, except as it appears from the accounts which you have just put in evidence.

A. There was no change except to refuse discounts when the times were bad; then we let the cash accumulate, and frequently stopped discounting.

273 Q. Up to the day of his death what arrangements, if any, had been made by Gen. Benjamin in reference to somebody representing him in the bank and doing his labor which he was required to do by the articles of partnership?

A. I know of no such arrangement.

Q. What proposition or suggestion had he made to that effect?

A. I do not know that he ever made any to me.

Q. What proposition of that kind did you ever know of his making to anybody else?

A. I never knew of his making any.

Q. Who was Mr. Waters, whose note for $3,000 is mentioned in Gen. Benjamin's memoranda?

A. His name was John G. Waters; he was a plasterer by trade.

Q. Where did he reside?

A. I think on G street, in this city.

Q. Do you remember anything about Gen. Benjamin getting a lot in this city from Gov. Shepherd?

A. I do.

Q. What do you remember about it?

274 A. I have an impression that Shepherd was indebted to Mr. Benjamin, and that he sold Mr. Benjamin this lot and closed up the account.

Q. About when was this?

A. I should have to refresh my memory in order to state exactly. I think it was the fall before he died.

Q. Do you remember that your firm lost something by the failure of Charles H. Moulton?

A. Yes, sir.

Q. When did that happen?

A. That happened while Gen. Benjamin was away on a visit to St. Louis and Northern Missouri.

Q. What was his business away on that trip?

A. He was telegraphed to in regard to a case of forgery in which he had been imposed upon to the amount of $15,000.

Q. By whom?

A. By a man by the name of Keebaugh.

Q. Did you notify Mr. Benjamin of the loss before he returned?

A. I did.

275 Q. Do you remember that, while here in business with you, Gen. Benjamin bought some paintings?

A. Yes, sir.

Q. Tell us the circumstances connected with that.

A. A pompous-looking Englishman came in the office with a painting known as "Buckeye," in a very handsome frame, and Mr. Benjamin and myself began to chaff him. He asked something like $400 or $500 for it. Mr. Benjamin made the proposition that we buy a couple of pictures of him. We were rather deceived by the frame—at least I was—more than by the painting. We made him an offer (I have forgotten exactly the amount), and he snapped us up on it. Mr. Benjamin was rather chagrined, and, to make his bargain better, the man finally sold him nearly all he had for about half of what Mr. Benjamin had offered for that one. He took Mr. Benjamin down to the hotel and showed him five or six pictures.

Q. What was the inducement for Gen. Benjamin to buy the pictures?

276 A. I think the first inducement was to not be obliged to pay what he had offered to pay for the first one; and, secondly, that they were showy pictures and would ornament his large rooms and help to fill up.

Q. Do you remember about what he paid for the whole lot?

A. I do not think he paid over $40, or something like that, for the whole lot.

Cross-examination by Mr. Lowe:

Q. What did Mr. Benjamin do with those pictures he bought?

A. He shipped them to Shelbina.

Q. What year did he buy those pictures?

A. I think it was in the spring of 1876, if I remember aright.

Q. What other property did he buy and send out to Shelbina?

A. He bought his wife a shawl one day and got stuck with that, too.

Q. What else?

277 A. He went to an auction sale of some silver-ware, and I think he bought and sent her some tea things.

Q. A silver tea set?

A. Silver plated, I think.

Q. He forwarded those to Shelbina?

A. Yes, sir; to his wife.

Q. State whether he was not in the habit of remitting money to his wife whilst he was here to pay her expenses.

A. That I could not say.

Q. You did not know of his sending any money to his wife?

A. I did not.

Q. Did you understand him to say that his wife was keeping his home there and having her servants, carriages, and so on whilst he was here; did he ever speak about that?

A. His wife was living there at the Vesper Place.

Q. Did he speak about his library and carriage and servants?

A. He used to talk about his place; yes.

278 Q. What did he say about it?

A. I have heard him talk about his clocks; he was very fond of clocks, and I have heard him tell about trying to make them strike together; I have heard him say that he had library enough to fill a car.

Q. Was that at Vesper Place?

A. Yes, sir.

Q. What did he say about his horse and carriage?

A. He said he had a horse that he had had a good while, and talked of bringing it on to Washington, he thought so much of it; he said, I believe, that when he went out there the horse could hardly walk, it had been shut up in the stable so long.

Q. How often each year did he go out there?

A. He did not go there more than once a year, I think.

Q. I wish you would think about it, for I think we have had evidence that he went oftener than that.

279 A. I judge from the number of times that I think he went; he went once before we went into partnership.

Q. Did he not go out as often as twice a year while you were in partnership together?

A. Not every year; no, sir; I do not think he did.

Q How long did he stay when he did go?

A. The longest time I have known of him staying was about 30 days.

Q. Did I understand you to say that during the time he was with you in business you never heard him speak in any way at all about returning to Missouri?

A. Never any defin*a*te conversation; I heard him mutter about it once.

Q. What kind of a mutter was it; did he use any words?

A. He said he could not stand it; it was at the time the terrible financial crash came upon us, and everybody was failing like so
many bricks; it came upon us like a thunder-clap; we did
280 not feel it here until after the other cities had gone down; we
were flourishing for awhile, and then it struck us like a wave, and then our best customers went off their legs, and men in whom we had the most confidence were soonest to fall.

Q. And then he said he could not stand it, and spoke about returning to Missouri?

A. He made some little talk about it, but not to any great extent; I do not remember but one time that he expressed himself in that way.

Q. Did you know a Mr. Plowman, an architect, in this city?

A. Yes, sir.

Q. (Handing a witness a drawing.) I wish you would look at that drawing and say if you ever saw it before?

A. I think I have.

Q. Mr. Benjamin showed you that drawing, did he not?

A. I think I saw it in the office; I remember the circum-
281 stances connected with it now.

Q. What did Mr. Benjamin say about this?

A. They were building at that time a kind of urinal in Judiciary Square, and it struck his fancy, and he said it would be a nice thing to have one on such a plan as this put up in the office, and that was about the time he made this muttering, I think. There was a carpenter that was working for me at the time offered to build some such thing for an office or pavilion, or something of the kind, but Mr. Benjamin finally concluded not to do it. I remember Mr. Plowman coming in about two or three times, and he had those plans. First it was for an office, and then, I believe, they got it down to a pavilion. The urinal out in Judiciary Square is what called Mr. Benjamin's attention to it, but he never did anything about it.

Q. Do you know whether or not he employed Mr. Plowman to draw that for him, and paid him for it? 282

A. I do not think he paid him for it.

Q. Did Mr. Plowman volunteer to draw this for him for nothing?

A. I do not know about that. I do not remember of his ever employing Mr. Plowman for it or paying him for it. I know there was talk about it; but whenever anything was suggested there were always plenty of people to do it. I know the carpenter was very anxious to get the job of doing it. He was in there at the time boxing up the pictures at the time they were sent.

Q. That was in the year 1876, was it not?

A. I think so; it was during those financial troubles—whatever the year was. I cannot say whether the architect brought that drawing in or whether the carpenter brought it in.

283 (The drawing above referred to is offered in evidence by Mr. Lowe, and it is marked "Exhibit R. P. L., No. 2.")

By Mr. Worthington:

Q. Is not Mr. Plowman now dead?

A. Yes, sir.

OTIS BIGELOW.

Testimony of Hawkins Taylor.

Hawkins Taylor recalled and further cross-examined by Mr. Lowe:

Q. In all the conversation- which you had with Mr. Benjamin about coming to Washington to live did he speak of what he had already done or what he proposed to do hereafter in that regard?

A. He never did. The whole of our conversation was on the basis of his belonging here; that was all. He never spoke about moving, or anything of the kind.

Q. He did not say that he had removed his family and already established a home here, did he? 284

A. No, sir.

Q. But that it was his purpose to do so hereafter; was not that the purport of what he said?

A. He never spoke of his family at all in any of the conversation I had with him at any time. I knew by general report, and understood it from other parties, that his family was in Missouri, and I supposed they were living in his old home there in Missouri; but he never at any time, I think, spoke to me about his wife or family at all.

Q. What I want to come at is whether his language imported present settlement or intention to come here and settle?

A. As I before stated, when I met him on the avenue first he told me that he had determined to settle here, and all of our conversation afterwards was on the basis of his belonging here. There 285 was never anything said about his moving his family. All of our conversations were on the basis of his being a citizen here and living here.

HAWKINS TAYLOR.

Testimony of John F. Clements.

JOHN F. CLEMENTS sworn and examined by Mr. LOWE:

Q. Please give us your residence and age.

A. My present residence is Washington city; my house is in Missouri; my age is 43 years.

Q. How long have you resided in Washington, and where did you reside before you came here?

A. I have called Washington my residence since 1877; I was here, however, in the fall of 1876, during the Presidential campaign of that year; prior to that time I lived in Missouri.

Q. Were you acquainted with John F. Benjamin before he deceased?

286 A. Yes, sir.

Q. State where you knew him first, how long you knew him, and how familiar you were with him.

A. I met him here first in 1864. He was then in Congress as a representative from the 9th district of Missouri. He lived at that time in Shelby county, and I lived in Macon county, the adjoining county, in Missouri. I knew him intimately from about that time until 1873, and then I knew him well, as a matter of course, up to the time of his death, but was not so intimate with him, because he was here while I was in Missouri.

Q. Did you know him here after he was in business with Mr. Bigelow?

A. Yes, sir.

Q. State how intimate you were with him and how frequently you saw him.

287 A. Whenever I came to Washington; when he was here in Congress, I usually called upon him at his house, and when he was in business I called on him at his banking office on 7th St. I called on him there a few days before his death, and went down to his house on the day he died, but did not get to see him.

Q. Had you any conversation with him about his living in Washington, or about his going back to Missouri to live? If so, state the substance of that conversation.

A. No, sir; I do not remember that we ever had any conversation in regard to his going back to Missouri or his making a permanent residence here.

Q. You do not know what his purpose was?

288 A. I do not know what his purpose was. After he had completed his house at Shelbina I went through it with him and looked at the surroundings, and talked about what a pleasant home he had, and everything of that kind; that was when he had returned from a trip to Washington, but I do not remember whether he stated that he intended coming back to Missouri or not. If he did I do not remember it.

Q. Are you acquainted with the handwriting of Mr. Benjamin?

A. Yes, sir; pretty well. I have received a great many letters from him, and probably have 50 or 60 of his letters at home now. I could almost swear to his signature, although I have not received a letter from him for a number of years.

Q. (Handing witness a letter with affidavit attached.) Look at that letter and see if that is his signature.

A. Yes, sir; I could tell that that is his letter without looking at the signature. I should say that that is Mr. Benjamin's signature.

289 (It is agreed by and between counsel that the letter and affidavit may go in evidence as part of the deposition of this witness, and it is conceded by counsel for Mrs. Allen that the letter is in Mr. Benjamin's handwriting. It is filed herewith and marked "Exhibit R. P. L., No. 3."

Q. State whether you know the fact that Gen. Benjamin was consulted as a Missouri man after he went into business with Bigelow in regard to my appointments in Missouri.

(Question objected to by Mr. Worthington as leading and immaterial.)

A. Yes, sir.

Q. State all you know about his being consulted.

A. All I know in regard to the matter is just this: That whenever there were vacancies in post offices, route agencies, or anything of that kind in our district the parties who were applicants almost invariably, if they were republicans, wrote to Gen. Benjamin, because it was understood here that he was consulted in regard to the appointments in that portion of the State. 290

Cross-examination by Mr. WORTHINGTON:

Q. Did the General ever talk to you about the feeling in Missouri against him?

A. Yes, sir.

Q. That and the attempted assassination of him by Hanley and the sympathy of the community out there with Hanley were sort of a hobby with him, were they not?

A. Yes, sir; it was kind of a hobby with him. He used to talk a good deal about it. He never talked to me as though he was really afraid they were going to hurt him, for he thought he had more friends than the others, even among the democrats, and they generally employed him to defend them in their lawsuits. I do not think he feared them much.

JNO. T. CLEMENTS.

291 *Testimony of R. P. Lowe.*

R. P. LOWE recalled and further examined by Mr. WORTHINGTON:

Q. Is not Charles M. King, who testified in this matter in Missouri a few days ago, of counsel for George H. Benjamin and the other heirs of John F. Benjamin?

A. I can only say that I presume he is, though Mr. Benjamin never told me so; but I have got letters from Mr. King and Mr. Giles from which I infer that they are of counsel.

Q. Do you not know that the firm of King & Giles were employed by Mr. George H. Benjamin in this case on a contingent fee?

A. No, sir. I do not know anything of the kind.

Q. Did not George H. Benjamin tell you that in substance?

A. No, sir.

292 Q. Did he not tell you that he had employed counsel on a contingent fee; that he was -able to employ counsel unless he should succeed?

A. No, sir; he never told me that.

The WITNESS: I want to explain how "Exhibit R. P. L., No. 2," came into my possession. It came into my possession through the mail from Messrs. King & Giles.

R. P. LOWE.

Testimony of Geo. Truesdell.

GEORGE TRUESDELL recalled and further examined by Mr. WORTHINGTON:

Q. Please examine this paper purporting to be a deed of real estate from Alexander R. Shepherd and others to John F. Benjamin, recorded on the 31st January, 1877, and state whether you have seen the deed before; and, if so, where.

293 A. I have seen it before among the papers of Gen. Benjamin. I do not know that I can state when I first saw it.

Q. State whether you found it among his papers after his death.

A. I did.

Q. Are you familiar with the signatures of any of the persons whose names are signed to that deed?

A. I reco-nize Alexander R. Shepherd's signature, and I think those of George Taylor and Sam. Cross. I am not positive as to those two, but I am as to Shepherd's.

(The deed is offered in evidence by counsel for Mrs. Allen, and is filed herewith, marked "Exhibit A. S. W.")

Q. State what you know of the location and surroundings of the lot conveyed by this deed.

A. I do not remember the number of the square, but the lot fronts north on M St., between 1st and 2nd Sts. northwest. At the time he brought the lot I resided in the same square. The lot is 294 a portion of a vacant tract of land, and is among the most elevated portions of Washington.

Q. Were you cognizant of the transaction at the time this lot was conveyed by Gov. Shepherd to Gen. Benjamin?

A. I was.

Q. Did you at that time have any conversation with Gen. Benjamin as to the use to which he proposed to put this lot; if so, what?

A. I cannot say that I had any conversation with him at the time of this transaction, but I remember having a conversation with him after he talked of buying the lot, or had already purchased it. The substance of that conversation was that it commanded a fine view, but that if he built on it he would want more ground.

Q. Did he say why he would want more ground, or what he thought of building?

A. I do not recollect that he stated any other reason than
295 that the portion he bought was too small for his purpose.

Q. State whether after coming to Washington on the 1st October, 1874, Gen Benjamin went back to Missouri that year.

A. I am quite sure he did not.

GEO. TRUESDELL.

Testimony of A. S. Worthington.

AUGUSTUS S. WORTHINGTON was recalled and testified further as follows:

Among the letters from Gen. Benjamin which my client, Mrs. Allen, as she has testified, found and turned over to me was the letter attached to the deposition of B. F. Dobbins in this case, marked "Exhibit B. F. D., No. 1," being a letter addressed "Dear Jennie," and signed "Papa," and dated August 26th, 1874. That letter I reco-nize as being in Gen. Benjamin's handwriting. It re-
296 mained in my custody until it was offered in evidence in Mis-
souri. It was used there on the trial of the will case, and its anthenticity was not disputed.

(Counsel for Guy H. Allen here offers in evidence "Exhibits M. O. H., Nos. 1 and 2," referred to in the deposition of Minnie O. Hammond, taken in this case at Cumberland on the 16th inst.; also the following exhibits referred to in the deposition of Guy H. Allen, taken at the same time:

Exhibits A, B, C (letter and envelope), D (letter and envelope), E, F (letter and envelope), G (letter and envelope), and H.

(Counsel for George H. Benjamin reserves the right to object to any of these letters, on the ground of irrelevancy and incompetency.)

These letters have all been in my custody since they were
297 found, and turned over to me by my client, and I recognize them
all as being in the handwriting of Gen. Benjamin; and all except Exhibits M. O. H., Nos. 1 and 2, and Exhibit A have heretofore been used in evidence in some phase of this case, and their authenticity has not been questioned. These exhibits are the identical papers which were shown to the witnesses referred to on the 16th inst., in the presence of counsel for George H. Benjamin, and were marked at the time by Mr. Humbird, the notary who took the depositions, and they have been in my possession ever since they were so identified.

AUGUSTUS S. WORTHINGTON.

298 EXHIBIT R. P. L., No. 3.

Bigelow & Benjamin, bankers, 605 Seventh street.

WASHINGTON, D. C., *July* 16, 1876.

Mr. John W. Miller.

MY DEAR SIR: You kind letter of the 13th is received. Let politics alone. It is more uncertain than a lottery, and much more annoying.

Not one in an hundred win, and often the winner loses in the end.

I am arranging to return to Shelbina; can't say what I will do when there. All will depend on the condition of money affairs at that time.

It is certain I can't remain idle. Should I conclude to enter upon anything requiring another's services I know of no one who would fill the bill more completely than yourself.

In your integrity & capacity I have all confidence.

Regards to Mrs. M.

Respectfully yours, J. F. BENJAMIN.

299 In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

I, John W. Miller, do hereby state that since the taking of my deposition in the above-entitled cause I found a letter from Gen. Jno. F. Benjamin to me, dated July 16, 1876, written and signed in the handwriting of said Benjamin, the same being the letter to which I referred in my said deposition as having received from Gen. Benjamin, and which I was then unable to find. I further state that said letter was found by me in my safe in my store in Shelbina, Mo., on the 11th day of February, 1880, and is now by me attached to this affidavit. I further state that I received said letter in reply to one which I had written Gen. Benjamin.

JOHN W. MILLER.

STATE OF MISSOURI, *County of Shelby:*

300 This day personally appeared before me, a notary public within and for Shelby county aforesaid, John W. Miller, who, being duly sworn, on his oath says that the foregoing statement and the facts therein contained are true.

J. W. MILLER.

Subscribed and sworn to before me this 16th day of February, 1880.

[Seal. Term expires May 13, 1881.]

J. W. TOWSON,
Notary Public.

50 cts. ack. fee paid by R. P. Giles.

301 **EXHIBIT A. S. W., NO. 1.**

This indenture, made this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, by and between Alexander Shepherd and Mary G. Shepherd, his wife, of the first part, and George Taylor, Samuel Cross, and Peter F. Bacon, of the second part, and John F. Benjamin, all of the city of Washington, in the District of Columbia, of the third part.

Whereas the said Alexander R. Shepherd and wife, by deed dated the fifteenth day of November, A. D. 1876, conveyed the piece or parcel of ground and premises hereinafter described unto the said parties of the second part upon certain trusts, as will fully appear by reference to said deed duly recorded among the land records of the District of Columbia; and whereas the said Alexander R. Shepherd has required the execution of this conveyance by the said parties of the second part for the purpose of said trusts: Now, therefore, this indenture witnesseth that the said parties of the first and second parts, for and in consideration of the sum of one thousand 302 dollars in lawful money of the United States to the said parties of the first part in hand paid by the said party of the third part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeof, release, and convey, unto the said party of the third part, his heirs and assigns forever, the following real estate situate and lying in the city of Washington, in the District of Columbia, to wit: All that certain piece or parcel of ground known and designated upon the ground plats or plan of said city and District as the eastern twenty-five feet front by the depth of one hundred feet of original lot numbered seventeen (17), in square numbered five hundred and fifty-seven (557), together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and 303 profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise however, of the said parties of the first and second parts of, in, to, or out of the said piece or parcel of ground and premises; to have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the third part, his heirs and assigns, to his and their sole use and benefit and behoof forever; and the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the third part, his heirs and assigns, that they, the said parties of the first part and their heirs, shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the third part, his heirs and assigns, from and against the claims of all persons claiming, or to claim the same, or any part thereof, by, from, under, or through them, or any of them; and, further, that the said 304 parties of the first part and their heirs shall and will at any and all times hereafter, upon the request and at the cost of the said party of the third part, his heirs or assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the third part, his heirs *or* assigns, or his counsel, learned in the law, shall advise, devise, or require.

In testimony whereof the said parties of the first and second parts have hereunto set their hands and seals on the day and year first hereinbefore written.

ALEX. R. SHEPHERD. [SEAL.]
MARY G. SHEPHERD. [SEAL.]
GEO. TAYLOR, *Trustee.* [SEAL.]
SAM. CROSS, *Trustee.* [SEAL.]
PETER F. BACON, *Trustee.* [SEAL.]

Signed, sealed, and delivered in presence of—
D. R. BELL.

305 DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, D. R. Bell, a notary public in and for the District aforesaid, in said county, do hereby certify that Alexander R. Shepherd and Mary G. Shepherd, his wife, and George Taylor, Samuel Cross, and Peter F. Bacon, parties to a certain deed bearing date on the fifteenth day of January, A. D. 1877, and hereto annexed, personally appeared before me in the District aforesaid, the said Alexander R. Shepherd and Mary G. Shepherd, his wife, and George Taylor, Samuel Cross, and Peter F. Bacon, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary G. Shepherd, being by me examined privily and apart from her husband, and having the aforesaid deed fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this nineteenth day of January, A. D. 1877.

[SEAL.] D. R. BELL,
Notary Public.

306 Received for record January 31, 1877, and recorded in Liber No. 845, folio 264, of the land records for the District of Columbia, and exam'd by—

GEO. F. SCHAYER,
Dep. Recorder.

307 EXHIBIT A. J. S. Humbird, Notary Public.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *June* 16, 1875.

DEAR BONNIE: Yesterday I received your kind letter of Monday. I am glad to hear you are well. The card announcing your safe arrival in C. has not been received. I learned from Jennie when she came down that you were expected last week. It is some little satisfaction to know you are this near me, but as you say nothing of any desire to visit Washington or to see me I will observe a profound reticence on that subject.

I, too, was surprised that your Canada operations terminated so abruptly. I never had any confidence in its success, and therefore don't regret it. I very much hope something promising more satisfactory results will be soon open to you.

My domestic affairs also underwent a sudden change, as you know. My house trade fell through in consequence of the inability of my grantee to raise $5,000, the amount of money she was
308 to pay in the exchange. I could not leave Vesper to itself; therefore my widowerhood is protracted, I don't know how long. Mrs. B. and Mate are there still. Don & the other pets ditto. I shall not probably see them again until late fall. I have not been able to find a house here to buy that suits me; I am therefore preparing to buy a site & build. The new house will be very near a duplicate of Vesper.

Banking is still good and our affairs flourishing. Can't complain of anything in that line. I am still working very hard, as I have done ever since I saw you last. My home trip was as pleasant as could be expected, but being obliged to attend court I got no rest.

Jennie is well and happy as usual. She expects to go to C. Saturday morning. You, of course, will be glad to see her. She is also anxious to see you. When her clothes are made she will be pretty well fixed up.

A card received to-day from Mollie.

309 Exhibit B. J. S. Humbird, Notary Public.

Washington, *Dec.* 24, '75.

Darling Bonnie: I have not yet recovered from my consternation on reading your letter of the 13th. I don't see how you could expect me to send you that large amount of money (nearly $500 currency) upon such a vague, incoherent, & crazy letter (for you were certainly crazy) as you wrote me. I cannot divine the cause. You should have written me all the facts that I might have judged what was best.

Don't consider me as censuring you. I know something excited you very much, and you did the best you could under the circumstances; nor am I going to forsake you or turn my back on you. I don't care what the cause, I will stand by you, protect and defend you under any and all circumstances, save and excepting a want of love and filial consideration for me, things, I know, my Bonnie will never be wanting in. But, my dear Bonnie, you must be frank and confiding in me. I wrote you immediately upon the receipt of your letter, and I trust you lost no time in answering me. I also
310 wrote yesterday to Mr. Allen.

It is better a little time should elapse that reason may be brought into requisition and the clouds clear away from your mind a little. I do trust & hope your condition is improved and you are less unhappy by this time. Give yourself no trouble as to what you shall eat, drink, or wherewithal you shall be clothed. Popsy loves Bonnie, and will surely provide all that.

Nor need you doubt as to whether such a place as home exists; you *you*, Bonnie, shall always have a home while Popsy lives, and so far as he is able to give it after his death. So cheer up, my darling Bonnie, I think I am able to sustain you.

Now, my dear Bonnie, write me all. "Nothing extenuate." I am so very anxious to learn all the facts. I have heard just enough to make me uneasy, and will be pained until I know all. I have written to Los Angelos for information from there. I want it from you. Don't fail to give me the whole truth. I think, after what
I say here, you can trust me. I want both sides, if there is
311 any two sides to it. I have said you must have been crazy
when you wrote. Mr. A. could have been but little better.
You say you are "ill, perhaps dying," and yet are able to write and undertake a journey of 2,000 miles.

This seems so strange in a sane person. I also know that the least thing up and upsets you.

Good-bye, Bonnie dear, for this time. Popsy is your dear friend, and loves you as ever. Don't fail to write me all.

P.

312 Exhibit C. J. S. Humbird, Notary Public.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers
605 Seventh street.

[In corner:] Went to the theatre last night. Pique "first-rate. How I wish for Bonnie. Took Kitten. She is very attentive, you know.

Washington, D. C., *March* 5, 1876.

Darling Bonnie: I received your letter on Thursday. From the delay I had expected the coming off of the event you mention. Glad to hear mother and child are doing well. Give both my best regards.

You are entirely mistaken in my letter to your mother. I never contemplated a thought even of revenging on you any wrong I may have suffered at the hands of another—nothing of the kind. It is this: A war has broken out, which precludes the possibility of there ever being any intercourse between him and me. I shall do nothing in aid of his getting a home, nor in support of one when got, but of which there is not the remotest probability of his ever getting. He is doing nothing in support of you, nor never will, for he cannot
support himself.
313 He says his folks have ostracised you both; that nothing
can come from that source, and his course has cut off all supply from me; (*b*) hence what are you to do. I recognize you to the fullest extent as my daughter. All my talk, professions, and promises were made in good faith, and came from a loving heart. It is as loving to-day as ever before, but I expect a daughter's love, (*s*) affection, & care in return. His influence over you and the hostility he mani-

fests towards me I expect will have its effect, and I infer it from this: All the circumstances lead me to believe his course was premeditated, and that you had full knowledge of it. This, I say, I infer to be the case, the effect of which is to bar your doors forever against me and keep you from mine.

In all my letters to you I have made mention of my desire for you to return here, and in my last the question- as to your wishes in that regard were pointedly put. You have never answered. I judged he has resolved on that method of punishing me. As I could have
none of the pleasure of your society, and as you were to be in
314 everything but by being supported a stranger to me, and as I
was to be solaced only by written expressions of love and
affection, as this was to be the condition of things as made up and presented to me, I must decline it all.

I have spent the most unhappy winter in all my life. I am not well, have not my usual sleep & appetite, and am lower in flesh than for 20 years past. My unsettled condition and thoughts of (*b*) *of* Bonnie has caused it all. The idea that all I have hoped for in building her up & making her happy, which has been the sole aim in my life since she was adopted as mine, the thought of it being fondly realized, has been my greatest pleasure, & that it should be so abruptly terminated has worried me more (*s*) than I can describe. Hence when the last obstacle was interposed, so causelessly and offensively interposed, & believing as I did as to its effect upon your course towards me, I resolved to end it here and now—fly to ills perhaps I know not of sooner than suffer those that now afflict me.
What else, my dear Bonnie, am I to do, if I am right in my
315 conjectures?

But you say I am not right in that respect; if so, you have no cause for fear as to your future, and I am relieved of considerable of the anguish which I have suffered. I go to Missouri soon after the 1st of April, to be absent probably 3 weeks. I cannot wind up here in a day—a month—nor six months, though my personal attendance all the time will not be required. We have not resolved yet on a dissolution, though we are not loaning any more money. We have now a large amount on hand lying idle and every day adds to the amount; it will be fully determined on before I go to Missouri.

(*b*) Now, my darling Bonnie, I am happy to have you say we are father and daughter still. I will not be the first to sunder the tie that has so long and so tightly bound us, nor revenge in you for anyone's faults until you separate from me.

(*s*) I want you to come down here next Saturday, the 11th, and
stay until I go to Missouri, when you can return to Cumber-
316 land again. I want you here now and I cannot be put off;
come & see if I have you still; write me immediately upon
rec't of this & I will send you the money to come with.

It will be but a short time before I go, and we can fix all up during the time.

"Come to the arms outstretched to caress you,
Come to the heart that is throbbing to press you."

I receive almost daily a letter or telegram from your cousins—for there is another one added to the list since I wrote you, a young lady—younger than the widow and prettier; they are coming down here before I go to Mo., and the younger wants to "go west;" they have a brother in Hannibal; she has been there once.

With warmest love, P.

317 EXHIBIT D. J. S. Humbird, Notary Public.

WASHINGTON, *April* 30, '76.

DARLING BONNIE: Yours of yesterday just rec'd; it is all right, and I will expect you Tuesday evening. I wrote you yesterday, telling you, among other things, to telegraph me on Monday and I would send you the money. As you, however, have enough to pay your fare you need — telegraph. Use the money you have, and I will repay it to you when you arrive here, with interest at ten per cent. per annum.

I am so sorry you are so afflicted. Everything goes wrong when Bon is away from me. All will, however, come out right after you get home. I can hardly endure waiting, my desire to see my darling Bonnie is so great. Until Tuesday eve, good-bye, dearest.

P.

318 EXHIBIT E. J. S. Humbird, Notary Public.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *May* 5, 1876.

DARLING BONNIE: I am puzzled and anxious. Tuesday night, at 9 o'clock, received your telegram just as I was putting on my hat to go to the depot. Of course, I was greatly disappointed. Thursday a. m. got your letter. Yesterday (Thursday) evening at the proper — went to the depot; was told the train was 1¼ hours late; returned home and went again. Train came in at ¼ to 11; no Bonnie; greatly disappointed again & puzzled, for I have got no telegram and to-day no letter. You may well imagine I am anxious about you. So sorry you are sick, and my suspense to know the reason of your not coming yesterday you can imagine. Somebody should have written or telegraphed me. I fear you — seriously ill, but hope not. Do let me know, & and do let me see you as soon as possible.

Loving as ever, P.

319 EXHIBIT F. J. S. Humbird, Notary Public.

WASHINGTON, *Sept.* 10, '76.

DARLING BONNIE: Rec'd your loving letter yesterday a. m. Do I miss you? I cannot express how much. The room looks, when I enter it, like death's chamber. No smiling, beaming countenance nor silver voice to greet me on my return from the day's toil. It is almost unendurable.

But, my dear Bonnie, I am in unusual trouble to-day. It being Sunday with no Bonnie to talk to and be cheered by would be enough to depress; but all that is largely added to by a business transaction.

You remember my loaning two large amounts to Mr. Keebaugh, of Glasgow, Missouri, on Howard county (Missouri) bonds as collateral. The last loan was made Sept. 1st. I sent him a draft for $5,000 on the 2d. Yesterday a. m. I received a letter from him acknowledging its receipt. Directly the telegraph boy came in the bank with a telegram to me from St. Louis saying: "I suspect you
have been investing in Howard Co. bonds; have seen your
320 draft. The bonds are counterfeit. Can save you something by
attachment if you will send me security for costs. I am an
att'y.

"B. M. JONES."

Not knowing the party, Mr. Jones, I suspected some trap, and I did not answer. At 10 last night rec'd: "Have rumors about Keebaugh in bond transaction. Are you all right. Might secure you something. Answer to-night.

"I. A. J. ADERTON."

Mr. Aderton is pres't of one of St. Louis National Banks in which I am a stockholder. The telegram showed clearly that something wrong exists. I answered him at once and wrote him and other parties in full. In addition to the bonds I have Keebaugh's note with Maj. Lewis & Mrs. B. N. Lewis as securities, who are very wealthy, but the notes may be forgeries. I am in the dark yet, but it looks bad at this writing.

No person lives in whom I have more confidence than Keebaugh. His brother is "my son," as you know he calls him, whom I
appointed to the navy and is now professor — mathematics
321 at Annapolis. I appointed Keebaugh P. M. at Glasgow, and
rendered him numberless favors, for which he has always expressed unbounded gratitude. His moral and social standing is excelled by none. In his letter rec'd yesterday he says he is going to the Centennial in Oct., & will certainly do himself the honor to call upon me. The bonds (I have $18,000 of them), the notes, correspondence, and telegrams I have all critically examined, & can detect nothing even suspicious. If it turns out that I am defrauded in this case I shall no longer put faith in anything human, & if I cannot trust him I cannot safely trust in any case. I would as soon have suspected the Pres't to get down from his exalted station and perpetrate a crime for money. Meanwhile *I* gives me much uneasiness until I learn all the facts. I am subject to be called there at any moment. Let it give you no uneasiness, darling. If lost I must strive & make it up. It belongs to me, and will neither break me nor seriously cripple my business. I owe it to no one. My love to all. My warmest love to you, my darling Bonnie. How I wish I could embrace you to-day. It is a long one to me. A thousand kisses.

P.

322 Exhibit G. J. S. Humbird, Notary Public.

Washington, *Sept.* 13, '76.

Darling Bonnie: Your loving letter of Sunday rec'd yesterday. I wrote you Sunday, but the contents of it were not calculated to add much to your happiness. Since then I have learned more of the affair. The bonds ($18,000) are doubtless forgeries. They are from the original plates, but the signatures are forged, and therefore worthless. The notes are signed by the counterfeiter, and also have two other names, either of whom are responsible and good for the debt, but my fear is their names are also forged. If so, I shall count the debt lost. I will probably hear as to that to-day or to-morrow. I may have to leave for Missouri any moment, in which case I will telegraph you that you may meet me for a moment or so at the depot.

I have had several unkind cuts inflicted on me, but this is the unkindest of all. I have lost all faith in humankind, and feel as
though I could trust no one in the future. Severe as this is
323 I do not intend it shall depress me much, nor shall I shed
any tears or sigh over it. I can replace it if my life and health are spared.

My darling Bonnie, my heart goes out to you the same for all this. I miss you more than I otherwise would. Doubtless my business affairs will be changed soon, but in what way I can't tell now. This amount, large as it is, in no way cripples me, nor does it affect my business in the least. It was an investment outside of business and grew out of personal friendship.

Let it in no way disturb you, my darling Bonnie. When it is over, and I know the worst, I shall dismiss it from my mind. Dismiss it from yours now. I will keep you posted.

My darling, accept assurance of my warmest love.

Love to all.

P.

324 Exhibit H. J. S. Humbird, Notary Public.

Shelbina, *Oct.* 21, '76

Bonnie Dearie: Here & well. Next Monday I attend the Paris court, which will detain me but a few days, not more than two or three. As soon thereafter as possible, not later than the Monday following, shall leave for W. I shall probably go through C., and will let you know when. Be ready at any time after Monday, 30th inst.

Have been well since here, except two days, severe neuralgia. Well of it now. Have made no progress in the bond case. Don't know as I will. The prospect slim.

I want to see you ever so much—never more. Love.

P.

325 STATE OF MISSOURI, }
County of Shelby, } *ss:*

The State of Missouri to M. J. Priest:

You are hereby commanded that, setting aside all manner of excuse and delay, you be and appear in proper person before H. B. Dines, notary public, at the office of B. F. Dobyns, in the city of Shelbyville, within and for said county, on Tuesday, the 10th day of February, A. D. 1880, at 1 o'clock p. m., then and there to testify and the truth to speak in a certain matter of controversy now pending in the supreme court of the District of Columbia, in the matter of the estate of John F. Benjamin, *died*, on the part of Guy H. Allen and Geo. C. B. Rowan in the *taken* of your deposition by said H. B. Dines, and this you shall in nowise omit. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

326 Witness my hand and seal of office. Done at office, in Shelbyville, in the county aforesaid, on this 10th day — February, A. D. 1880.

[L. S.]

H. B. DINES,
Notary Public.

Agreement to take Depositions.

In the Matter of the Estate of JOHN F. BENJAMIN.

In the Supreme Court of the District of Columbia, holding a Special Session for Probate Business.

It is hereby agreed by and between King & Giles, attorneys for Geo. H. Benjamin and other heirs of John F. Benjamin, and B. F. Dobyns, attorney for Guy H. Allen and Geo. C. B. Rowan, and P. B. Dunn, attorney for Joshua M. Ennis, that depositions as to the domicil of John F. Benjamin, the above-named testator, at the time 327 of his death, may be taken under the order of the court made in this case on the 24th day of January, 1880, at the law office of B. F. Dobyns, in the city of Shelbyville, county of Shelby, and State of Missouri, on the 10th day of February, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place and between the same hours until completed.

Feb. 10th, 1880.

P. B. DUNN,
Att'y for Joshua M. Ennis.
B. F. DOBYNS,
Att'y for Guy H. Allen & Geo. C. B. Rowan.
KING & GILES,
Att'y's for George H. Benjamin and
Other Heirs of John F. Benjamin.

328 In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN, Deceased.

It is hereby agreed by and between King & Giles, attorneys for George H. Benjamin and other heirs of John F. Benjamin, and B. F. Dobyns, attorneys for Guy H. Allen and George C. B. Rowan, and P. B. Dunn, attorney for Joshua M. Ennis, that all objections except the objection that the questions are leading are to be considered as having been made at the proper time to all questions and cross-questions in the depositions hereto attached, and that said depositions are open to all such objections except that the questions are leading.

Shelbyville, Mo., February 10th, 1880.

P. B. DUNN,
Att'y for Joshua M. Ennis.
B. F. DOBYNS,
Att'y for Guy H. Allen & George C. B. Rowan.
KING & GILES,
329 *Att'ys for George H. Benjamin and other Heirs of John F. Benjamin.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

It is agreed that depositions as to the domicil of the above-named testator at the time of his death may be taken under the order of the court made in this case on the 24th day of January, 1880, at any place in Shelby county, Missouri, that may in writing be agreed upon by Messrs. King & Giles, attorneys for George H. Benjamin, and by B. F. Dobyns, Esq., attorney for Guy H. Allen and George C. B. Rowan, and by P. B. Dunn, Esq., att'y for Joshua M. Ennis; and such depositions may be taken before any person authorized by the laws of Missouri to administer an oath and at any 330 time agreed upon by said King & Giles and said Dobyns and said Dunn, provided that they shall be taken within the time fixed by said order.

EDWARDS & BARNARD,
Atty's for Geo. Truesdell, Ex'r.
ROBERT CHRISTY,
Att'y for Joshua M. Ennis, Ex'r.
A. S. WORTHINGTON,
Attorney for Guy. H. Allen and George C. B. Rowan.
R. P. LOWE,
Att'y for G. H. Benjamin and other Heirs.

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Depositions of witnesses produced, sworn, and examined on the 10th day of February, in the year of our Lord eighteen hundred and eighty, between the hours of eight o'clock in the forenoon 331 and six o'clock in the afternoon of that day, at the law office of B. F. Dobyns, in the city of Shelbyville, county of Shelby, and State of Missouri, before me, H. B. Dines, a notary public within and for said county, in a certain cause now pending in the supreme court of the District of Columbia, in the matter of the estate of John F. Benjamin, in pursuance of the annexed agreements of counsel; B. F. Dobyns appearing on behalf of Guy H. Allen and George C. B. Rowan, and R. P. Giles on behalf of George H. Benjamin and other heirs of John F. Benjamin.

Testimony of Thomas S. Priest.

THOMAS S. PRIEST, of lawful age, being duly sworn and examined on the part of Guy H. Allen and George C. B. Rowan, deposeth and saith:

Ques. No. 1. What is your name, age, residence, and occupation?

Ans. No. 1. Thomas M. Priest; am sixty-eight years old; my residence is Shelbyville, Shelby county, Missouri; my occupation is that of a farmer.

Ques. No. 2. Were you acquainted with John F. Benjamin, deceased, formerly of Shelby county, Missouri?

Ans. No. 2. I was.

332 Ques. No. 3. How long had you known him prior to his death and how intimately?

Ans. No. 3. About twenty years, and intimately during the whole time.

Ques. No. 4. Did you have a conversation with him at any time before he left Shelbina, Missouri, and went into business at Washington—with reference to his leaving there and going to Washington?

Ans. No. 4. I did.

Ques. No. 5. Where was he then living?

Ans. No. 5. In Shelbina, Missouri.

Ques. No. 6. When did that conversation take place?

Ans. No. 6. It took place about three months before he left for Washington and, I think, in the spring of 1874.

Ques. No. 7. Where did you have that conversation?

Ans. No. 7. It was between the bank and the corner store in Shelbina, Missouri.

Ques. No. 8. Do you remember anything which he said in that conversation relative to leaving Shelbina and going to Washington?

Ans. No. 8. I do.

333 Ques. No. 9. Please state your recollection of what he said on that subject.

Ans. No. 9. He told me that he was going to leave Shelbina and go to Washington, because he paid more tax than any man in the country and received fewer benefits. He said there was a disposition to oppress him in Shelbina; he said he had laid down a sidewalk across his lot, and asked the corporation to have a sidewalk laid down across another lot to give him access to town, and had been refused. He said he would not live in any community that would treat him in that way.

Ques. No. 10. What other reason, if any, did he give for wanting to leave Shelbina?

Ans. No. 10. He said he did not consider his life safe in Shelbina. He said, in relation to the Hanley matter, that he heard that a great many persons had remarked that Hanley had made a damned poor
shot; that it was a pity that he had not killed him; that he
334 would not live in any community where he did not consider
his life safe.

Ques. No. 11. What, if anything, did he say in that conversation with reference to his property in Shelbina?

Ans. No. 11. He said he wouldn't turn his hand over for the property; that he had made the money in the county that built it; that he cared nothing about it.

Ques. No. 12. State what, if anything, he said in that conversation relative to living in some place where the taxes would be lighter on him.

Ans. No. 12. He said he could go to Washington, and his taxes wouldn't be more than half what they were in Shelbina.

Ques. No. 13. What, if anything, did he say in that conversation about the people here in Shelby county being down — him?

Ans. No. 13. He said they were down [on] him.

Ques. No. 14. State whether in that conversation he said anything about the business in which he expected to engage in in Washington and with whom?

335 Ans. No. 14. He told me that he was going into the banking business in Washington. I don't think he told me anything about who he was going into business with; I am satisfied he did not.

Ques. No. 15. State what gave rise to that conversation which you have detailed.

Ans. No. 15. I was requested by some citizens of Shelbina to have a conversation with him and try and induce him to remain in Shelbina.

Ques. No. 16. State whether in that conversation you succeeded in prevailing on him to stay.

Ans. No. 16. I did not.

Cross-examination by R. P. GILES:

Ques. No. 1. In what month did this conversation occur?

Ans. No. 1. I think it was in the month of May.

Ques. No. 2. State whether your request for him to remain in Shelbina had any reference to again engage in the banking business in Shelbina.

336 Ans. No. 2. There was nothing said to me on that subject.

Ques. No. 3. Do you remember whether Gen. Benjamin ever talked with you about again starting a bank, after closing out the First National?

Ans. No. 3. I think he did.

Ques. No. 4. State when and where the conversation took place.

Ans. No. 4. It was after closing out the First National, but I don't remember the date; it took place in Shelbina.

Ques. No. 5. State what was said by him upon the subject in that conversation.

Ans. No. 5. He said, in answer to a remark made by me that he would have to buy a new safe, that he would not; that his hat would hold all the papers necessary.

Ques. No. 6. State whether this was before or after the conversation you have referred to in your examination-in-chief.

Ans. No. 6. It was some time before.

337 Ques. No. 7. Do you know what the rate of the State and county taxes were in Shelby county in the year 1874?

Ans. No. 7. I do not.

Ques. No. 8. State whether they exceeded two per cent. on the dollars in the year 1874.

Ans. No. 8. I don't think they exceeded that; if they did it was a very little.

Redirect examination:

Ques. No. 1. State whether you owned any real estate in the town of Shelbina in the year 1874.

Ans. No. 1. I did.

Ques. No. 2. State if you know what amount of corporation tax you paid on the one hundred dollars in that place that year.

Ans. No. 2. I think it was twenty-five cents on the one hundred dollars.

THOS. S. PRIEST.

Subscribed and sworn to before me, on the day, at the place, and within hours first aforesaid. Witness my hand and notarial seal.

[L. S.] H. B. DINES,
Notary Public.

Testimony of James Collier.

JAMES M. COLLIER, of lawful age, being duly sworn & examined on the part of Guy H. Allen and George C. B. Rowan, deposeth and saith:

Ques. No. 1. What is your name, age, residence, & occupation?

338 Ans. No. 1. James M. Collier; my age is fifty-six; my residence is Shelbyville, Missouri; occupation, merchant.

Ques. No. 2. Were you acquainted with John F. Benjamin, deceased?

Ans. No. 2. I was.

Ques. No. 3. How long and how intimately had you known *you?*

Ans. No. 3. I had known him since 1848; I was intimately acquainted with him.

Ques. No. 4. Where did he reside in the year 1874?

Ans. No. 4. He resided in Shelbina, Missouri.

Ques. No. 5. State whether in the year 1873 you had any conversation with him relative to any attack which had been made upon his life and his leaving Shelbina.

Ans. No. 5. I did in the fall of 1873.

Ques. No. 6. Do you remember anything that he said in that conversation on that subject; and, if so, what?

Ans. No. 6. I do; the conversation commenced in regard to his
getting shot; he was telling me about his going to leave there;
339 that he could not nor would not live there; he was going to
Washington city to go into the banking business; he was
speaking about moving to Washington city and making it his home and going into business there; that he was going on immediately and his wife would follow as soon as he could dispose of his property there; he said on that subject that he had a notion to pull his house down in Shelbina and sell the brick and that he would do it if he did not sell; that they, the people of the town, should never have any of the benefits of the house.

Ques. No. 7. Do you know in what year he went into business in Washington?

Ans. No. 7. I think it was in the winter of 1873; but I can't say certain.

Ques. No. 8. State if you know how long it was before he left here to go into business at Washington that you had this conversation with him.

Ans. No. 8. It was about October, 1873, the same fall that he got shot.

340 Ques. No. 9. State whether in the year 1874 you had any
conversation with him about his going to Washington.

Ans. No. 9. I can't say positively that I did; I am not certain about the year.

Ques. No. 10. State whether you saw him [in] the year 1875.

Ans. No. 10. I did.

Ques. No. 11. State whether you then had any conversation with him with reference to the sale of his property in Shelbina.

Ans. No. 11. I did.

Ques. No. 12. State what he said on that subject.

Ans. No. 12. I think he was telling of a trade that he had made with a widow woman in Washington city; that it had fallen through.

Ques. No. 13. What, if anything, did he say in that conversation about his ever living in Shelbina again?

Ans. No. 13. He said that he never expected to live in Shelbina any more; that his life was not safe there; that the people were not
friendly to him.

341 Ques. No. 14. State whether you saw Gen. Benjamin in the
spring of 1876.

Ans. No. 14. I think I did.

Ques. No. 15. State whether you had any conversation with him then with reference to the sale of Vesper Place; and, if so, what?

Ans. No. 15. I did; he was telling me about being on a trade with some banker; I have forgotten his name; I think he had been on a trade with that man and that trade had fallen through.

Cross-examination by B. P. GILES:

Ques. No. 1. State in what month the conversation in 1875 occurred.

Ans. No. 1. I think it was in November.

Ques. No. 2. Did he attend the Shelby circuit that year?

Ans. No. 2. He did.

Ques. No. 3. Where did the conversation take place?

Ans. No. 3. At the court-house in Shelbyville.

Ques. No. 4. State in what month the conversation occurred in 1876.

Ans. No. 4. I think it must have been in May.

342 Ques. No. 5. In what place did it take place?

Ans. No. 5. I think it was in Shelbina.

Ques. No. 6. State whether you ever talked with him at any time after the First National Bank was closed about starting another bank in Shelbina.

Ans. No. 6. I never did.

Ques. No. 7. How long after he was shot was it before you had the conversation first alluded to in your examination-in-chief?

Ans. No. 7. My impression is that he was shot in the latter part of the summer, and my conversation with him was some time in October following.

Ques. No. 8. State whether you saw him in the fall of 1876.

Ans. No. 8. I think I saw him, but can't say for certain.

Ques. No. 9. Did you have any conversation with him then?

Ans. No. 9. I can't say whether I did or not.

J. M. COLLIER.

343 Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid. Witness my hand and notarial seal.

[L. S.] H. B. DINES,
Notary Public.

Testimony of Sam'l F. Dunn.

SAMUEL F. DUNN, of lawful age, being duly sworn and examined on the part of Guy H. Allen and George C. B. Rowan, deposeth and saith:

Ques. No. 1. What is your name, age, residence?

Ans. No. 1. My age is fifty-five years; residence, Shelbyville, Shelby county, Missouri; my name is Samuel F. Dunn.

Ques. No. 2. Were you acquainted with John F. Benjamin, deceased?

Ans. No. 2. I was.

Ques. No. 3. How long and how intimately had you known him?

Ans. No. 3. About twenty-seven or twenty-eight years. I
344 knew him from the time he came to Missouri up to the
time of his death, and intimately.

Ques. No. 5. State if you know his native State.

Ans. No. 5. I think I have heard him say that his native State was New York, but am not positive.

Ques. No. 6. Do you know in what year he left here and went into business at Washington?

Ans. No. 6. I can't say positively, but my impression is that it was in the year 1874.

Ques. No. 7. State whether, shortly before his going there to go into business, you had any conversation with him relative to his leaving Shelbina and going to Washington.

Ans. No. 8. Yes, sir; I did.

Ques. No. 9. Do you remember anything that he said in that conversation on that subject?

Ans. No. 9. I do.

Ques. No. 10. State all you remember that he said on that subject.

Ans. No. 10. He said to me that he was arranging his busi-
345 ness with a view of leaving Shelbina, and that he was going
to Washington city to do business, or go into business. He
said that he didn't consider his life safe in Shelbina, and that he was burdened with taxation beyond endurance. He spoke of the town board refusing to make a walk to connect with a walk which he had made, and that it — very unjust that they should refuse to make walks to connect with his, or something to that amount. I don't think of anything else he said.

Ques. No. 11. State what he said in that conversation, if anything, relative to making Washington city his home.

Objected to by R. P. Giles as leading.

Ans. No. 11. He said that he was going to Washington for the purpose of making it his home in the future.

Ques. No. 12. What, if anything, did he say in that conversation relative to his living in Shelbina any longer?

346 Objected to by R. P. Giles as leading. Question withdrawn.

Ques. No. 13. What, if anything, did he say in that conversation relative to his living in Shelbina?

Ans. No. 13. He said that he didn't consider his life safe in Shelbina, and that he was going to leave there.

Ques. No. 14. Did he state to you in that conversation in what kind of business he was going to engage in Washington?

Ans. No. 14. He did not.

Cross-examination by R. P. Giles:

Ques. No. 1. Where did this conversation take place?

Ans. No. 1. In the town of Shelbina, Missouri.

Ques. No. 2. In what place in Shelbina?

Ans. No. 2. In the First National Bank.

Ques. No. 3. Was this before Gen. Benjamin went out of the banking business?

Ans. No. 3. Yes.

Ques. No. 4. Do you — in what year he wound up the First National Bank?

347 Ans. No. 4. I think it was in the year 1874.

Ques. No. 5. What time in the year did this conversation take place?

Ans. No. 5. I can't speak positively about that, but I think it was some time in the summer.

Ques. No. 6. Do you — in what year he was shot by Hanley?

Ans. No. 6. I think it was in 1873, but can't be positive.

Ques. No. 7. How long after this conversation before Gen. Benjamin left for Washington to go into business?

Ans. No. 7. I think he left some time during the latter part of 1874.

Ques. No. 8. Who, if any one, was in the bank with you at that time?

Ans. No. 8. No one except Benjamin and myself.

Ques. No. 9. Are you positive of this?

Ans. No. 9. I am.

Ques. No. 10. Are you positive it was in the First National Bank?

Ans. No. 10. I am.

Ques. No. 11. Was there at any time while Gen. Benjamin resided in the county any personal difference between you?

348 Ans. No. 11. Not that I know.

Ques. No. 12. Have you in this conversation given the language or the substance of the conversation?

Ans. No. 12. I have given the substance, and at the same time a good part of it may have been the exact language.

Redirect-examination:

Ques. No. 1. Do you know when John F. Benjamin closed out his interest in the First National Bank in Shelbina?

Ans. No. 1. I think it was — latter part of the year 1874.

S. F. DUNN.

Subscribed and sworn to before me on the —, at the place, and within the hours aforesaid.

Witness my hand and notarial seal.

[L. S.] J. B. DINES,
Notary Public.

349 *Deposition of Marlin Bigelow.*

Marlin Bigelow, of lawful —, being duly sworn and examined on the part of Guy H. Allen and George C. B. Rowan, deposeth and saith:

Ques. No. 1. What is your name, age, and residence?

Ans. No. 1. My name is Marlin Bigelow; my age is seventy-nine years; my residence Shelbyville, Mo.

Ques. No. 2. Were you acquainted with John F. Benjamin, deceased?

Ans. No. 2. I was, intimately.

Ques. No. 3. How long and how intimately had you known him?

Ans. No. 3. I knew him from the time I first came to this State, which was in 1865; we were intimate friends.

Ques. No. 4. Do you know in what year he left Shelbina, and went into business in Washington?

Ans. No. 4. I think it was in the year 1874.

Ques. No. 5. State whether shortly before his going there to go into business you had any conversation with him relative to his leaving Shelbina and going to Washington.

Ans. No. 5. Yes.

350 Ques. No. 6. Do you remember anything which he said in that conversation on that subject?

Ans. No. 6. Yes, sir; I remember the conversation distinctly.

Ques. No. 7. State all you remember.

Ans. No. 7. He and I entered into a conversation about his leaving Shelbina. He said that he was going to Washington, and that he was going into business there. He said that he was going into the banking business with a Mr. Bigelow. I asked him what object he had in going there. He said that there were several things that prompted him to go there. He said that the most important thing why he was going to leave Shelbina and go to Washington that he thought he could do fully as well or better there than in Shelbina, but he stated that the most important thing was that he didn't consider himself safe in Shelbina. I asked him who he was
351 afraid of. He said that he was not afraid of any man particularly, but that he didn't consider his life safe in Shelbina. He said that he didn't know nor didn't care what became of his property, and that if he lived long enough he would not leave one brick on top of another.

Ques. No. 8. What, if anything, did he say in that conversation about remaining in Washington?

Ans. No. 8. He stated to me that he was making his arrangements to make Washington his permanent home as soon as he could arrange his business to suit him.

Ques. No. 9. Are you positive that he used the word home?

Ans. No. 9. I am.

Cross-examination by R. P. GILES:

Ques. No. 1. Where did this conversation take place?

Ans. No. 1. In Shelbina.

Ques. No. 2. At what place in Shelbina?

352 Ans. No. 2. About sixty rods west of the bank.

Ques. No. 3. What business, if any, was he engaged in at that time?

Ans. No. 3. I can't tell you.

Ques. No. 4. What time in the year was this?

Ans. No. 4. According to the best of my recollection it was the last days of August or the first of September.

Ques. No. 5. In what year?

Ans. No. 5. My best recollection is that it was 1874, and I think I am correct on that point.

Ques. No. 6. Did he tell you in that conversation that he had then made arrangements to go into business with Mr. Bigelow?

Ans. No. 6. Yes, sir.

Ques. No. 7. How long was this after the time that he was shot?

Ans. No. 7. I can't say.

Ques. No. 8. Do you know when he quit banking in Shelbina?

Ans. No. 8. I couldn't state definitely.

353 Ques. No. 9. State what makes you think that it was the last of August or first of September that this conversation took place.

Ans. No. 9. It is this, sir: I being curator for the estates of my grandchildren, I was there on business connected with the estate. After I had gotten through with my business I went in pursuit of Gen. Benjamin, as I had not seen him for some time. I found him in the bank. I told him that I just called around to talk with him.

Ques. No. 10. Are you able to state from the fact that you had this other business in Shelbina that this conversation took place at the time you have stated?

Ans. No. 10. I am.

Ques. No. 11. Could it have been as early as the middle of August?

Ans. No. 11. No; it was later in the month than that.

Ques. No. 12. Could it have been *been* later than the 5th of September?

Ans. No. 13. I think not, from the records which I have at home.

354 Ques. No. 14. Was Col. Benjamin engaged in the banking business at Shelbina at the time?

Ans. No. 14. I think not.

MARLIN BIGELOW.

Subscribed and sworn to before [me] on the day, at the place, and within the hours first aforesaid.

Witness my hand and notarial seal.

[L. S.] H. B. DINES,
Notary Public.

Testimony of Thos. Mitchell.

THOMAS MITCHELL, of lawful age, being duly sworn and examined on the part of Guy H. Allen and George C. B. Rowan, deposeth and saith:

Ques. No. 1. What is your name, age, residence, and occupation?

Ans. No. 1. My name is Thomas Mitchell; my age is sixty-one years; Shelbyville, Missouri, is my place of residence; my occupation is clerk of the Shelby county court of Shelby county, Missouri.

355 Ques. No. 2. How long have you held that office?

Ans. No. 2. Since January, 1875.

Ques. No. 3. As such county clerk are you the custodian of the personal assessment-books of Shelby county?

Ans. No. 3. I am.

Ques. No. 4. Please produce from your office the personal assessment-book for 1875.

Ans. No. 4. I have it here.

Ques. No. 5. Is it the original book containing the assessment of personal property in Shelby county, Mo., for the year 1875?

Ans. No. 5. It is.

Ques. No. 6. Please examine that book and state what amount of personal property was assessed opposite the name of John F. Benjamin for that year.

Ans. No. 6. I have examined the book and find one thousand three hundred and fifty dollars opposite the name of John F. Benjamin.

356 Ques. No. 7. Please state under what heads of personal property in the book that amount is listed.

Ans. No. 7. Under the head of horses, one hundred dollars; under the head of all other personal property, twelve hundred and fifty dollars.

Ques. No. 8. State whether in that book, and on the same page with the said name, there is a heading as follows: Money, notes, bonds, and other credits.

Ans. No. 8. There is.

Ques. No. 9. State whether opposite said name there is any amount placed on that book under that head.

Ans. No. 9. There is not.

Ques. No. 10. State whether the name John F. Benjamin occurs anywhere else in that book.

Ans. No. 10. I don't think it does. I have not been able to find it after dilligent search.

Ques. No. 11. Please produce from your office the personal assessment-book for 1876.

357 Ans. No. 11. I have it.

Ques. No. 12. Is it the original book containing the assessment of personal property in Shelby county, Mo., for the year 1876?

Ans. No. 12. It is.

Ques. No. 13. Please examine that book and state what amount of personal property was assessed opposite the name of John F. Benjamin for that year.

Ans. No. 13. I have examined the book, and find two thousand one hundred dollars opposite the name of John F. Benjamin.

Ques. No. 14. Please state under what heads of personal property in the book that amount is listed.

Ans. No. 14. Under the head of horses, one hundred dollars: under the head of all other personal property, two thousand dollars.

Ques. No. 15. State whether in that book, and on the same page with the said name, there is a heading as follows: Money, notes, bonds, and other credits.

Ans. No. 15. There is.

358 Ques. No. 16. State whether opposite said name there is any amount placed on the book under that head.

Ans. No. 16. There is not.

Ques. No. 17. State whether the name of John F. Benjamin occurs anywhere else in that book.

Ans. No. 17. I don't think it does; I have not been able to find it after dil*l*igent search.

No cross-examination.

THOS. MITCHELL.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

Witness my hand and notarial seal.

[L. S.] H. B. DINES,
Notary Public.

Testimony of B. F. Dobyns.

B. F. DOBYNS, of lawful age, being duly sworn and examined, on his oath saith:

359 Ques. No. 1. What is your name, age, residence, and occupation?

Ans. No. 1. My name is B. F. Dobyns; my age is forty-two years; residence, Shelbyville, Shelby county, Mo.; my occupation, attorney-at-law; I am of counsel for Guy H. Allen and George C. B. Rowan in this case; I know what the general election days were in the State of Missouri in the years 1874, 1875, and 1876; they were on the first Tuesday after the first Monday in November of each of those years; I am acquainted with the handwriting and signature of John F. Benjamin, deceased; I have in my possession a letter in his handwriting, dated Washington, August the 26th, '74, signed Papa, and directed Dear Jennie; I took this letter from the files of Shelby county circuit court, having obtained an order from Judge
John T. Redd to do so, for the purpose of using it in this
360 case; I took said letter from among the exhibits attached to
the deposition of Jennie Welch, on file in said court, in a certain cause now pending therein, wherein George H. Benjamin and others are plaintiffs, and Joshua M. Ennis and others are defendants. I here hand the notary this letter, and ask that it be attached to and made a part of my deposition in this case.

(R. P. Giles objects to the reading of this letter at the hearing of this matter, because it is not signed by John F. Benjamin in his own proper name.)

(Letter is hereto attached and marked "Exhibit B. F. D.," No. 1, H. B. Dines, notary public.)

I have also in my possession a letter in the handwriting of John F. Benjamin, dated March 3rd, 1876, with his signature to it, which is here handed the notary, and asked to be attached to and made a
part of this deposition (which letter is hereto attached and
361 marked Exhibit B. F. D., No. 2, H. B. Dines, notary public).

I have in my possession another letter dated April 2nd, 1876, which is in the handwriting of John F. Benjamin, with his signature thereto, which I here produce and ask that the same be attached to this deposition and made a part thereof (which letter is hereto attached and marked "Exhibit B. F. D., 3," H. B. Dines, notary public).

I received these two letters a few days since by mail from M. Y. Duncan, Esq., of Mexico, Missouri. I am well acquainted with M. Y. Duncan and with his handwriting and signature. I have in my possession six letters, all which are in the handwriting of said M. Y. Duncan, with his signature thereto, which I here produce and ask to be attached and made a part of this deposition.

362 (All these letters from Mr. Duncan objected to by R. P. Giles, because they are incompetent, irrelevant, and immaterial.)

(The six letters are marked, respectively, "Exhibit No. 1," "Exhibit No. 2," "Exhibit No. 3," "Exhibit No. 4," "Exhibit No. 5," and "Exhibit No. 6.")

I received these five letters several days since by mail in a letter from A. S. Worthington, Esq., of Washington city, D. C., dated 29th January, 1880, at Washington, D. C.

B. F. DOBYNS.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

Witness my hand and notarial seal.

[L. S.]

H B. DINES.
Notary Public.

I, Henry B. Dines, a notary public within and for the county of Shelby, in the State of Missouri, do certify that, in pursuance of the annexed agreements of counsel, came before me at the law 363 office of B. F. Dobyns, in the city of Shelbyville, in the county of Shelby and State of Missouri:

Thomas S. Priest, James M. Collier, Samuel F. Dunn, Marlin Bigelow, Thomas Mitchell, and B. F. Dobyns, who were by me severally sworn to testify the whole truth of their knowledge touching the matter in controversy aforesaid; that they were examined, and their examination reduced to writing and subscribed by them, respectively, in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and their said depositions are now herewith returned.

And I further certify that said Thomas S. Priest, James M. Collier, Samuel F. Dunn, Marlin Bigelow, Thomas Mitchell and B. F. Dobyns are residents of the county of Shelby, in said State of Missouri.

364 Given at Shelbyville, in the county of Shelby and State of Missouri, on this 10th day of February, 1880.

In testimony whereof I, the said Henry B. Dines, notary public, have hereunto subscribed my name and affixed my notarial seal.

[SEAL.]

HENRY B. DINES,
Notary Public.

Expenses of taking these depositions. Witness fees:

Thomas S. Priest	75
James M. Collier	75
Samuel F. Dunn	75
Marlin Bigelow	75
Thomas Mitchell	75
M. J. Priest	1 25
	$5 00
Geo. W. Baker, constable, for subp*eoi*ning 1 witness	25
Notary's fees for taking these depositions	10 92
Postage on these depositions	54
Total expenses	$16 71

365 EXHIBIT B. F. D., No. 1. H. B. Dines, Notary Public.

WASHINGTON, *Aug.* 26, '76.

DEAR JENNIE: Your loving letter is just received. Thanks. I wrote Guy yesterday of my going into banking here in Washington. I am to-day preparing articles of partnership, which will probably be signed to-morrow, the business to commence the 1st of October. On Monday morning I shall leave here for Missouri, & will be in your place on the western-bound train which arrives there about 2 p. m., I believe; hope to see you then, and, perhaps, I will lay over a day. I will return here by or before the 1st of October. Mrs. B. will probably remain in Missouri until next spring; don't know yet in what manner I will live the ensuing winter, whether keep house or board; can't determine that until I return. The time is so short that it is hardly worth while for you to make a trip here, and I will be quite busy until I leave and I can see you in C. You will have time to send me another letter after receiving this. I like very much to read your letters, for I know they speak from the heart. I perhaps will send you or Guy one more between this and Monday.

Good-bye, dear Jennie; rest assured of my fondest love.

PAPA.

366 EXHIBIT B. F. D., No. 2. H. B. Dines, Notary Public.

Otis Bigelow. John F. *Bigelow*. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *March* 3, 1876.

M. F. Duncan, Esq., Mexico.

DEAR SIR: In reply to yours of the 17th ult., I will trade my Shelbina house & furniture for your farm if we can agree on prices. I shall be in Missouri in April & will try & see you.

Respectfully yours, J. F. BENJAMIN.

367 EXHIBIT B. F. D., No. 3. H. B. Dines, Notary Public.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *April* 2, 1876.

M. Y. Duncan, Esq., Mexico.

DEAR SIR: I leave here for Shelbina via Chicago on the 10th inst. I will be there (Shelbina) on Saturday certainly, & probably on Thursday and Friday, of next week. I will be pleased to meet you and show you my house, &c. I trust you will make it convenient to be there.

Respectfully yours, J. F. BENJAMIN.

368 EXHIBIT No. 1. H. B. Dines, Notary Public.

MEXICO, MO., *Feb.* 17, 1876.

Hon. John F. Benjamin, Washington city, D. C.

DEAR SIR: Would you trade your residence at Shelbina, Mo., and the furniture for a farm of 200 acres adjoining the city of Mexico, Mo., on the north? Said farm well improved, all under fence, & well set in grass; fine orchard, every variety of fruit; good residence, with eight rooms; elegant barn. A portion of it has been laid off into town lots, but no sale made. All of it can be laid off into building lots of from 2 to ten acres & sold to good advantage. There is a tenant house on the farm of six rooms; abundance of soft water; good timber; full view of the town from the farm; lands lie well & extend to and include bottom on Salt river; no hills; lands near it have sold in last year for $300 an acre. If we can agree on terms I will trade for your property. At your leisure should be glad to hear from you, if you think favorably of the sugges-
369 tion.

With respect, I have the honor to be your ob't servant,
M. Y. DUNCAN.

370 EXHIBIT No. 2. H. B. Dines, Notary Public.

MEXICO, MO., *March* 14, '76.

Col. John F. Benjamin, Washington city, D. C.

DEAR SIR: Yours of the 3rd inst. came to hand safely. In view of the fact that I am compelled to be absent from home attending the spring courts in April, a portion of the time, I should be very glad to have you designate the time and place of our meeting. If you should go directly to Shelbina I could meet you there, examine the property, and then we could come here. It might, however, be as well for you to come by way of Mexico and then go to Shelbina. If you will fix the time and place I will endeavor to make my arrangements accordingly.

Very truly and respectfully yours,
M. Y. DUNCAN.

371 Exhibit No. 3. H. B. Dines, Notary Public.

Macon, Mo., *April* 14, 1876.

Dear Sir: Of all I have seen and heard to-day in our (to me) very pleasant interview this is the sum: Whilst you have in appearance and convenience a most excellent house, composed of the best material, executed with great skill and displaying most commendable taste, I fear that there is most too much involved in it to justify me in attempting the outlay. As a home it would certainly be desirable, but as an investment it would as certainly be a failure.

No increase of value could possibly come to it, but on the other hand time would work a gradual decline.

At this time some repairs are needed, and these, as you remarked to-day, must be watched and attended to constantly.

It can bring in no income and can never be cashed for its value for many reasons. One is its location as to business and social
relations is not such as to command its value. I am also of
372 the opinion that your tank for lighting purpose will have to
be removed to a greater distance from the building, but this would not cost but little to do, and I think would be some advantage in getting insurance. As to the furniture, I regard it almost as good as new, tho' second-hand furniture will not bring its value in any market as a general thing. But yours has been used but little comparatively and has been elegantly kept. I suppose the carpets are somewhat worn, but the rest of the furniture is yet in good style and keeping. Then another important point to me is the annual expense of keeping the property in order, paying taxes, and insurance and repairs, furnishing fuel, &c., &c.

Yet, notwithstanding these matters, it is desirable property, and I would like to own it and am frank to say so. The property I offer you makes me a good support annually for my family, and, located as it is by one of the best towns in North Missouri, has and will advance in value. I think if you will come and take a look at
373 it there is a chance for a trade yet.

Whilst you and I both think well of your property, my impression is that you will also think favorably of mine when you see it. Since I left you another proposition has come into my head. I cannot now, for lack of time, lay it before you in detail, but will explain to you when you come over next week, as I hope you will. One object I had in trading was to settle up all my business and take a new start and to devote my attention exclusively to the study and practice of law. Should I trade with you I should also want to sell my business house, now renting for fifteen hundred dollars a year, and as you spoke of having capital now idle it might suit you to buy this also, & your friend Marmaduke could attend to the collection of rents. This was a part of the new proposition I had to make, and indeed you might find it to your interest to locate in Mexico.

You could take out the piano, all your tableware & silverware
and bedding and the remainder of the furniture could
374 *could* go with the house, and perhaps there might be some

other things I would not need, but don't now call to mind anything else to be omitted in our trade. The pictures, of course, are not included.

If after all you deem it worth while to come and see me I should be pleased to have you do so, whether we trade or not.

Very respectfully yours, M. Y. DUNCAN.

375 Exhibit No. 4. H. B. Dines, Notary Public.

Mexico, Mo., *July* 7, 1876.

Col. John F. Benjamin, Washington, D. C.

Dear Sir: At the time your last letter reached me I was constantly employed and for some weeks after in the circuit court at this place, and since then my health for a part of the time was such that I could not address you. You requested me to state my terms, with a description of my property as nearly as I could. I will now try to do so.

The street that runs north and south through Mexico immediately east of the Court-House square, or rather which is the east boundary of the square, after extending due north to the city limits, and about 200 yards north of the city limits as now laid off, cuts the western line of my farm and extends on my said western line a distance of 1,100 y'ds. Along this street there are a number of elegant building sites all near enough for any business man to reside on and do business in town. 376 Gov. Harden's residence is on this street extended, and still further north than mine. Capt. Kennan, brother-in-law to Hardin, has a residence opposite the northern portion of my land, and he practices law in town. All along this street my lands are in full view of the town & you can see the time of day on town clock. Then on the south side of my land for nearly the distance of half a mile there are a number of the best sites for residences, fronting south, to be found in any country. These all face the town fully & the ground is magnificent. The house I live in is in good taste; has beautiful yard. There are eight rooms, with cellar, good smoke-house, ice-house, barn that cost $1,000, three fine cisterns, wood-house, coal-house, orchard of near 200 trees.

There is also a double log house with stables attached, used as a tenant house, that stands on the north part of my land. Around the orchard I have a hedge now nearly ready to trim out. This hedge is about ½ mile in length, the space included being 377 large enough to make this length. There is also a fair board fence around the orchard and I have other board fencing on the farm. In all there is about seven & half miles of fencing on the farm. I have many small lots enclosed for convenience.

The town property consists of a two-story brick house 24 feet front & extends back to the alley 110 feet; has metal roof, & the building contains twelve rooms, besides two rooms in the basement.

This house is in good repair. The Savings Bank occupies the two front rooms below, & pays $800 a year rent. Judge Clark pays $100 for his room up stairs, & Mr. Graham pays $200 for the three back rooms, & has been a tenant for 6 or 7 years. He is a photographer, and is fixed.

This house fronts most on Jefferson street 24 feet, & runs back on Jackson street 110 feet to an alley.

Dr. French has small room in the rear. So has Mr. Jones. Mrs. Moore occupies one room as dress-maker. P. W. Carter has 378 one, & Mr. Schooler one. These rooms front on Jackson street. Two of them are below & the rest in the second story.

W. F. Jones has leased the two rooms in basement & will carry on the grocery store. It has been used for that, and was regarded as a good stand, & brought $20 per month rent at one time. This house is at the S. E. corner of the square; is as good a corner as there is in town. Indeed it is regarded by many as the best now, as well as prospectively, in the town. It is central, and will continue to be so.

I have now said all I could that would be of any service to you, and think that the picture is rather under than over drawn. These two pieces of property—the farm and all it contains, being 205 acres of good land, and this house—I will convey to you, free of all incumbrance, clear title, abstract furnished, taxes all paid up, and you convey to me your house and grounds attached at Shelbina—5 acres, I think you said—with the furniture in the house, 379 except your piano, your silver-ware, you bed linen, your table ware, and your pictures, and you pay me in cash $12,000.00 *dollars*. You furnish abstract of title all clear, and taxes all paid, and surrender to me possession by the first day of Sept., 1876, and I will then give you possession of the town property here at that time, and the farm on the first day of March, 1877.

Respectfully yours, M. Y. DUNCAN.

P. S.—In making this proposition I expect your gas fixtures & water pipes, your furnace, and all heating apparatus connected therewith to be in good running order, and the property insurable in a No. 1 company, and if so insured the policy to be turned over to me and I turn over to you the policies on my property here. I have all insured now.

I send you a rather poor photograph of our cottage home. The wind was very high when this was taken, and everything was blown into nonentity.

I believe I will now go and read all I have to our mutual 380 friend, John Marmaduke, who knows you and your property, me and mine, and just ask him to state over his own signature what he thinks of what I have here said. What do you say to it?

Respectfully,

M. Y. DUNCAN.

381 EXHIBIT NO. 5. H. B. Dines, Notary Public.

MEXICO, MO., *May* 13, 1876.

DEAR SIR: Sorry you did not visit our place during your trip to the State—not that I think we could have made a trade, for I am of the opinion that it would be getting too many eggs in one basket for me to own your property, and then I think your price too high. It is putting too much into something that brings in nothing, and in case of partition the property would sell for almost nothing, and I am as likely to die as anybody else, and it would be a needless thing to my little children and would have to be sacrificed. What I have here is valuable. I have asked some friends what value they would put on my place and they differ somewhat, some putting it at 125 and others at $150 per acre, and they agree on the town property at $15,000.00.

The latter is renting at $1,600 a year now, and that is much lower than it has rented for. Owing to the hard times last year I
382 reduced the rents, but can raise them whenever I want to and they are compelled to pay them. I can also lease the farm at six or eight hundred dollars a year.

The bank uses a part of my business house and pays $800 a year quarterly. It is on the best corner in the town, and the property is new and will always command a good rent. If you feel disposed to look any farther in the trade, and will come here by the 10th of June next, I will take your place at a fair price, and take possession at once, and you can reserve your piano, music box, silver plate, table-ware, and bedding, and perhaps other things that I might not want, and I will surrender you possession here on 1st of September. If I trade I must do so by the 15th of June any way, as if I don't by that time I have other arrangements to look after, and would not then want to trade.

Respectfully, M. Y. DUNCAN.

Hon. J. F. Benjamin, Washington city, D. C.

383 EXHIBIT No. 6. H. B. Dines, Notary Public.

MEXICO, MO., *May* 22, 1876.

DEAR SIR: Your favor of 16th inst. is to hand, and has been carefully read. The force of your logic I am ready to admit as from your standpoint. You will remember that I conceded as much whilst at your house; but would you claim as much from one not so well situated as to income as yourself? Having talked at long range, it occurs to me that unless we can come nearer together and that you see my property it will be impossible to tell whether we can trade or not. I am ready now to make you a proposition, but hesitate to do so unless you had some personal knowledge of my property. If you insist on my making a proposition before you come I will send you a rough diagram of the farm and a cut of the house, barn, and the business house in town, and will then tell you what I will do frankly and unequivocally. This is, in my judgment, proper. Allow me to say that I mean business, and will talk business all the way through, and will deal fairly and will make the trade if
384 I can see that it looks reasonable.

I hope, however, you will not require a proposition in advance, but will come and see me by the 10th or 15th of June, look and determine on the ground.

What say you?

Very respectfully, your ob't servant,

M. Y. DUNCAN.

Hon. J. F. Benjamin, Washington City, D. C.

385 In the Supreme Court of the District of Columbia, holding a a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Please take notice that we shall take the deposition- of Guy H. Allen, Minerva O. Hammond, Mrs. Minnie Hammond, Eugene Hammond, Jennie Welch, Mrs. —— Loomis, and others, on Monday, the 10th day of February, 1880, before J. S. Humbird, a notary public, at house No. 62 Washington street, Cumberland, Maryland, beginning at three o'clock p. m. on that day, and continuing thereafter as said notary shall direct. The reason for taking these depositions *de bene esse* is that *sent* of the witnesses resides more than one hundred miles from the District of Columbia. The depositions so to be taken we inte- [to] use in the case upon the question of the domicile

386 of the testator, John F. Benjamin. You are invited to attend and cross-examine the witnesses.

A. S. WORTHINGTON,
Attorney for Guy H. Allen & Geo. C. B. Rowan.

To R. P. Lowe, att'y for Geo. H. Benjamin *et al.*

Acknowledged this 5th day of February, 1880. I consent to the time and place.

R. P. LOWE,
Att'y for Geo. H. Benjamin et al.

Depositions taken at No. 62 Washington street, Cumberland, Md. on Monday, February 16th, 1880, before me, James S. Humbird, notary public in and for the county of Alleghany, State of Maryland, persuant to the notice hereunto annexed.

Present: A. S. Worthington, counsel for Guy H. Allen, and R. P. Lowe, Esq., counsel for Geo. H. Benjamin and others, heirs of John F. Benjamin.

MINERVA O. WELSH, a witness produced by counsel for Guy

387 H. Allen, being first duly sworn, deposes as follows:

Testimony of Minerva O. Welsh.

1st. State name, age, and residence.

My name is Minerva O. Welch; age 69; reside in Cumberland; am the mother of Mrs. Guy H. Allen here present. I knew the late John F. Benjamin from 1860 to his death. He adopted my daughter, Mrs. Allen, as his daughter in 1870 or 1871. He recognized her as his daughter from that time until his death. He supplied her, clothed her in every way as a father would have done.

2. I remember when Gen. Benjamin went to Washington to go into business with Mr. Bigelow. I remember a conversation with General Benjamin at Cumberland in 1874 or 1875 after he had gone into business in Washington, when I said to him he must be lonely there without his wife, and he replied it was only
388 temporary. If he succeeded in his business he expected to move his family on, as I understood it—not his exact words. I saw him again when he was on a visit in Cumberland about a year after, and he said he had succeeded beyond his expectations. I think that — about the time he was trying to get Mrs. Schoolcraft's house. He visited us in 1876 at Cumberland. During one of his evenings there he told me he made up his mind to make Washington his permanent home—this was about two or three weeks before Christmas, 1876—that he had made up his mind to bring his family on to Washington. I asked him how he thought Mrs. Benjamin would like Washington; he had told me she was not partial to Washington. He said she would be satisfied anywhere he was and where it was to his interest. He said he had bought or was about to buy two lots on which he intended to build, on one a home for himself, the counterpart
389 of Vesper Place, and intended to bring all his furniture and household goods. I asked him if he didn't think it would be very expensive to move his furniture; he replied: Yes; but Mrs. Benjamin would be better satisfied; and to sell such furniture as his in Shelbina would be a perfect sacrifice. I asked him when he thought of building; he said in the spring. I recollect he said he would bring his brag buggy horse on before that time. He remarked that he was done with Missouri. I thought he alluded to the Hanley trial and the trouble about it. I asked him if his would-be murderer was running at large; he replied: "Yes, madam." I remember his way of speaking; he was very much in earnest about it. He said he could scarcely go out of his house without the chance of meeting him. He said the last time he was home he had to pass near Hanley, who was sitting on a porch; Mr.
390 Benjamin was in his buggy; he saw him face to face. It required all his Christian forbearance and power to control himself. When he said he was done with Missouri I thought he referred to the Hanley trouble, because before Hanley shot him he had always spoken well of Missouri. I have now stated all I remember of that conversation. There is one thing I don't know whether I made you understand, and that is I don't remember whether this conversation occur-ed in December before he died or in January; the two weeks were so close together. I think he made only two visits to us here after his last visit to Missouri; one was about two before Christmas, 1876; the other was the first week in January, 1877. I am positive that these visits were in December and January immediately preceeding his death. I did not see him after these visits until I saw him on his death-bed. I am
391 positive the conversation I have detailed was after the Han-

ley trial. In speaking at that time of the lot upon which he was going to build—it was somewhere near a monument; I don't know what one. On the first of these visits he came to spend two or three days; he stopped at the Queen City Hotel; on the second one he came to take Guy down to Washington. I remember she was taken with the measles a short time afterward.

Cross-examined by R. P. LOWE, Esq.:

I made General Benjamin's acquaintance at Washington in 1866; he was then a member of Congress. I was keeping house there then. My husband was living with me. We became acquainted with him by his renting a room from us. I went to Washington in the spring of 1865, and left there in 1868, when my husband died.

392 I came to Cumberland to live four or five years ago, or in 1873, when Mrs. Allen got married. I was living in Cleveland with my daughter when General Benjamin adopted Mrs. Allen; General Benjamin was visiting there at the time. He wrote to my daughter first, saying that he wished to adopt her. I either read it or she read it to me. I do not know what has become of the letter. He made the same proposition, shortly after, in person, when he came to Cleveland, and asked me to consent to the adoption. He called for my daughter to take her to Washington, where another sister of hers, Mrs. Ross, had gone. He was to take her on a visit to Mrs. Ross, and then to his home in Missouri. It seems to me it was in 1870; I am not positive; it was before he went into business in Washington, and after he left Congress. I made Mrs. Ross a visit a few day- after, to see my daughter. I now think he was in Congress at that time. Mrs. Allen married in April, 1873,

393 in Cumberland, and went to Cleveland to live with Mr. Allen's father. They lived there a year or two. Mrs. Allen came to Cumberland, and he went to California in the spring of 1875, and she went there in the fall of same year. I received letters from them in California; some of them came from San Francisco and some from Los Angeles. They returned here in January, 1876. They have not lived together for some time. There has been no divorce to my knowledge. They have not lived together since January, 1876; he was here then. He said——

2nd Quest. I understand you to say in your examination-in-chief that General Benjamin in the two conversations referred to in your statement-in-chief said that he had made up his mind to move his family to Washington. Is this what you intend to be understood?

Ans. Yes, sir; to make his home in Washington. Mrs. Allen went to Missouri with General Benjamin when he first adopted her, in the year 1870. I am not one of the legatees. At present

394 I am dependent on my children, since—death of my husband. Myself and Mrs. Allen are now living here with Mr. Hammond. The initials of Mr. Allen's name are J. M.

MINERVA O. WELSH.

Testimony of Minerva O. Hammond.

Examined by Mr. WORTHINGTON.

MINERVA O. HAMMOND, a witness produced on behalf of Guy H. Allen, being first duly sworn, deposeth and saith:

My name is Minerva O. Hammond, commonly called Minnie. I reside in Cumberland, Md., with my husband, Eugene Hammond. I knew the late John F. Benjamin; I knew him from 1866 until the time of his death. He lived in Washington when I first made his acquaintance; he was there as a member of Congress. My father and mother were living there then with a family of five daughters. He occupied a room at our house; he took his meals at the Seaton House. He spent his evenings in the parlor 395 with our family. We were friendly and intimate; were very fond of him. That intimacy continued during the rest of his life. I was living in Cumberland when he went into business in Washington, and have lived here ever since. After General Benjamin went to Washington and went into business with Mr. Bigelow I frequently heard him speak of his intention to live in Washington, but I cannot remember of any particular conversation until after the Hanley trial, during his last two visits at Cumberland. Before that time he had frequently said that he could not live in Shelbina, Missouri, and that Washington was his chosen place of residence. I remember receiving a letter from General Benjamin just after the Hanley trial, enclosing some poetry.

Mr. Worthington here hands the witness a letter of five pages, dated Washington, October 30th, 1876, addressed "Dear Pet," and signed J. F. B., and a slip of paper headed "Missouri, '66 to 396 '76." This is the letter and poetry which he sent me. I reco-nize the handwriting of the letter, and I think the poetry is in his handwriting. I know it is the poetry he sent me. This letter and poetry are marked for identification Exhibit- No-. 1 & 2. I received these documents by mail just about the time of the date of the letter.

The first visit [was] in December, 1876, just before the holidays, and the second was just after the holidays to take Guy home. Neither of the visits extended beyond a few days. He stopped at the Queen City Hotel and spent his evenings with us. At one, if not at both—but I am inclined to believe it was the last one—he spoke of where he proposed to live. I am very sure [the] conversation came about [by] my mother asking him the question in regard to the wound he had received, and this led to the conversation about the wound, the trial, and the results of the trial. He spoke very bitterly. He said he had hoped it would end more fairly, and considered the re- 397 sult a piece of injustice to himself, and said it was caused pretty much by political animosity, and that he might have known it would not have resulted fairly there to him in that county. It was in that conversation with mother I remember he said decidedly he could not live there, and spoke of his determination to sell his property there and build or buy in Washington, which ever he could do most advantageously. He was talking of building then and having the house an exact counterpart of the house he had in Missouri. He spoke of the expenses to bring his furniture all on; still he had determined to do it.

He spoke of the letter which he had written, and which I have just identified. I remember him saying that twice he had lost money, once through Shepherd, and through Keebaugh, but he said it did not harass him near so much as did the result of the Hanley trial. It proved to him the state of feeling in the county against him. 398 His principal conversation was the result of the trial. I remember him saying he could not live in the same town with that man. As soon as he could wind up his business there he would move his family to Washington. I remember my mother asking him how his wife would like the change of living in Washington. I remember he said she would be satisfied to — wherever he was. In course of the conversation that night he spoke of a change in his business affairs. I think it was in regard to lending money; that he would not lend any out. What impressed it on my mind—the matter of the removal of the furniture—was that the furniture was so valuable and would be sacrificed if sold in Missouri. He spoke very determinedly to leave Missouri, and he had chosen Washington as a place where he would reside. My mother and myself were present during the whole of this conversation, and my sister Guy I am sure during part of the time. 399 My sister Jennie was at my house during the time, but I do not remember whether she was present or not. She is now living at Queenstown, on the eastern shore of Maryland. Mrs. Loomis, my sister, is very bad in bed to-day. General Benjamin called me "Pet" for a nickname; that was Guy's name, for he called Mrs. Allen "Bonnie" and Miss Jennie "Birdie." I don't remember of him saying anything about going back to Missouri to live.

Cross-examination by Mr. LOWE:

I have been married twelve years. I never lived in Washington after I was married. I have lived in Cumberland, and I do not expect to derive any benefit from General Benjamin's will if it should be sustained. General Benjamin, in the conversation that I have testified in chief, at the conversation after the Hanley trial, said that he intended to build in Washington. I don't remember that 400 he said anything about buying or having bought a lot, or that he had built.

1st. Ques. In these conversations which General Benjamin had with you and your mother did you understand General Benjamin to say that he had removed his family to Washington or his furniture to Washington, or that he meant to do so hereafter?

Ans. He said he would so as soon as he could make it suit.

2nd Int. You understood that General Benjamin's wife was living at the Vesper Place, at Shelbina, Missouri?

Ans. I believe she was.

3 Int. He said that he thought his wife would be satisfied to live in Washington whenever he would move there?

Ans. He did.

4 Int. This conversation was in December, 1876, or January, 1877?

Ans. Yes, sir.

5 Int. General Benjamin died in March, 1877, did he not?

Ans. He did.

Redirect by Mr. W.:

401 6 Int. Did you understand General Benjamin when he spoke of moving to Washington, in that conversation, referred to moving himself, or to moving his wife and furniture?

Ans. Of course he spoke of moving his wife and furniture to Washington, himself being already there.

MINNIE O. HAMMOND.

Testimony of Guy H. Allen.

Examined by Mr. WORTHINGTON:

GUY H. ALLEN, a witness produced and sworn in her own behalf, being examined by her own counsel, deposeth and saith:

My name is Guy H. Allen, legatee mentioned in the will of the late John F. Benjamin.

1st. Int. After General Benjamin went into business in Washington with Mr. Bigelow, what conversation, if any, did you have 402 with him in regard to where he proposed to reside?

Ans. I remember having had several conversations with him upon that subject after that time. He spoke of ultimately making Washington his home. It was to depend principally upon his success in banking there. This was after he was established in business in Washington. I remember that previous to his establishing the banking business in Washington having heard him say that if he succeeded in business there he would make it his permanent home. I have heard him refer to it so frequently that I cannot remember any date of the conversation except as to the year in which they occur-ed. He never said anything to me about returning to Missouri, but, on the contrary, about moving from Missouri to Washington. He said it was no longer a desirable place of residence for him, and seemed that he was no longer appreciated 403 in the community. I remember he said he was no longer going to pay taxes for the education of the children of the man who shot him. When I was with him in Washington we would frequently walk out together. On several of these occasions he took me to see houses which he was thinking of buying or making a trade for. He always seemed to find some objection to them, and he would look at lots with the prospect of building also. I think this was in the summer of 1875; also in 1876; am not positive as to the month. He finally concluded that he would not trade, but buy a lot and build, which was during [the] last year of his life. He said he was going to build a house as near like Vesper Place as possible, and move Mrs. Benjamin and the furniture from Vesper Place to Washington and make it his permanent home. I remember

the occasion of his last two visits to Cumberland, spoken of by my
404 mother and sister. I do not remember that he accompanied me to Cumberland from Washington in 1876, or whether he came after. His last visit to us was in January, 1877. I remember I was sitting in the room with papa, mamma, General Benjamin, and Mrs. Hammond; I could not state [the] conversation positively, because I heard only part of it. I remember that I fell asleep on the sofa, and they joked me about it afterwards. But I remember the tenor of his conversation was upon moving to Washington, moving his wife and furniture there. He spoke of the result of the Hanley trial, and said it had caused a change in his feelings in regard to the community.

After he had been in business some months he spoke of having met with success in his enterprise, and that he was contem-
405 plating making a change of his wife and his household affairs from Missouri to Washington. It was in this connection that he spoke of providing a home for me with them. He always spoke of living in Washington; I never heard him speak of returning to Missouri to live after that time. I was with him more in the latter part of 1875 and during 1876 than at any previous time. I lived in Cleveland from the time I was married, in April, 1873, until June 1875. In 1876 I spent my time partly in Cumberland and partly in Washington; I am under the impression I was most of the time here. We corresponded regularly when separated from 1871 until his death. He corresponded with Mrs. Hammond and my younger sister, Jennie. I remember that about a year ago my sister Jennie and myself gathered up all the letters that we could find written by General Benjamin to either of us, and gave them all to my
406 counsel, Mr. Worthington; in his custody they have been since. I do not remember having destroyed them; it has been my habit to destroy letters, but I do not remember particularly having destroyed his.

2nd Int. Please look at the letters which I now hand you; state whether you recognize the handwriting and what you know about them.

Counsel here hands to witness letters dated June 16th, 1875, December 24th, 1875, March 5th, 1876, April 30th, 1876, May 5th, 1876, Sept. 1st, 1876, Sept. 13th, 1876, Oct. 21st, 1876.

Ans. They are all in the handwriting of General Benjamin, and I got them by mail from him about the time they were written. (These letters so identified by the witness are here marked for further indentifiation Exhibits A, B, C, D, E, F, G, H.) This letter dated June 16th, 1875, Exhibit "A," I found a few weeks ago in the bottom of one of my trunks, under the paper
407 that I had spread there. I had overlooked it in the search I made a year ago. I cannot recall what the rest of the letter was about; it seems incomplete, though I am not certain there was any more. I remember having received it from General Benjamin.

3rd Int. In this letter dated December 24th, 1875, Exhibit "B," General Benjamin says: "Bonnie shall always have a home while

Popsey lives." Did he provide a home for you after that; if so, where?

Ans. He would send for me to come to him at Washington, and he always spoke of it as my coming home.

Cross-examination by Mr. LOWE:

1st Int. Where were you at the time you received the letter dated December 24th, 1875?

Ans. I was in California.

2nd Int. At what place in California?

Ans. I don't remember where I was when I received [it].

408 3rd Int. Do you remember the places you were in in California; whether in San Francisco or Los Angeles you received the letter?

Ans. I don't remember.

4th Int. Do you remember how many years General Benjamin was in Congress?

Ans. I don't remember; I think it was six.

5th Int. Was he in Congress at the time you were married?

Ans. I think not.

6th Int. Was he at your wedding?

Ans. No, sir; he was not; I think he was then in Missouri; he was invited to be present. When I asked him to be present he said he would not witness the sacrifice. Mr. Allen was not acquainted with him, and did not ask his permission to marry me. I consulted the General about the marriage. I asked his permission. He questioned me very closely in regard to Mr. Allen's position in society—as to his ability to support me. After having told him all I knew upon the subject he then said that he didn't look upon it 409 with favor. I sought to convince — it was for my happiness for him to permit me to marry Mr. Allen. He yielded a very reluctant consent.

7th Int. Did you consider yourself his adopted daughter after you married and went off to Cleveland to live?

Ans. I certainly did.

8th Int. Did you receive a letter at any time from General Benjamin in which he proposed to make you his adopted daughter?

Ans. I received a letter from General Benjamin containing such a proposition in 1870.

9th Int. Where is that letter?

Ans. I do not know, sir.

10th Int. How long is it since you saw that letter?

Ans. I have no recollection of having seen it for some time?

11th Int. When was it you went out to Missouri with General Benjamin to his home?

Ans. I went to Missouri with General Benjamin in February, 1871.

12th Int. Have you not been there since?

410 Ans. I was there once since; the summer of 1874.

13th Int. After he had established himself in Washington?

Ans. He was then banking in Shelbina, Missouri.

14th Int. He was then a member of Congress doing business in Washington?

Ans. He was not in business in Washington at the time.

15th Int. Was he here on a visit at that time when he took you out with him?

Ans. No; I went from Cleveland alone.

16th Int. Didn't you still make a third visit there after that.

Ans. I have not visited there since then during his lifetime. His house was el*l*egantly furnished throughout; had a library-room built for that purpose. He had one horse and buggy and kept two servants; their names were Gill and Joamea Pickett. I don't think
my visit exceeded four or five days at that time.
411 17th Int. Did you see Mrs. Benjamin; was she living there
at the house at the time?

Ans. Mrs. Benjamin was absent at that time.

18th Int. How often did the General go on a visit to Missouri during the year?

Ans. As I was not with him constantly I cannot state positively how often. I think it was more than twice a year.

19th Int. Do you know of his sending pictures and other articles home to his wife?

Ans. I remember his purchasing pictures and silver dinner service, and sending them to Missouri. I remember his showing me a chart of a grape-arbor that he intended building at the Vesper Place. I don't remember the year.

20th Int. Did the General have a room furnished?

Ans. Yes, sir; he rented a room already furnished. He boarded at
several different places; principally at Harvey's. Harvey's is
412 a restaurant. He was not in the habit of eating where he had
his room. I could not possibly say what proportion of time I spent in Washington. My visits at times would not be longer than a week, and again longer. The entire portion of my time in visiting in Washington may have been two or three months within the two years spoken of.

21st Int. To your knowledge, did General Benjamin ever remove his wife or furniture to Washington, or have a home and keep house there?

Ans. He did not.

22nd Int. When he spoke of making Washington his home, was it not always in the future that he intended to do so?

Ans. I think that such was his expression.

Redirect examination:

Int. In your answer to the last question do you refer to his remaining in Washington or to his bringing his wife and furniture
there?
413 Ans. He would always speak as if it were an understood
thing that his home was there, but that it was incomplete without Mrs. Benjamin and the surroundings of Vesper Place.

Recross-examination:

Int. You say that he would always speak as though it was an understood thing that his home was in Washington. Now state what it was that he said which made it an understood thing.

Ans. His conversations were so frequent upon the subject that I could not but so understand it. He spoke [of] his aversion to Missouri—of his intention of locating permanently in Washington.

GUY H. ALLEN.

I hereby certify that the foregoing depositions of Minerva O. Welsh and Minerva O. Hammond and Guy H. Allen were taken by me at the time and place mentioned in the notice hereto appended; 414 that each of the witnesses was by me duly sworn to tell the truth and nothing but the truth in the matter in controversy, and that the deposition was reduced to writing in her presence and signed by her in my presence.

I further certify that the reason for taking these depositions is that each of the witnesses resides more than one hundred miles from the District of Columbia, and that I am not of counsel for either party in this cause, nor in any manner interested in the result thereof.

Witness my hand and notarial seal this 16th day of February, 1880.

[L. S.] J. S. HUMBIRD,
Notary Public.

415 EXHIBIT M. O. H., No. 1. J. S. Humbird, Notary Public.

WASHINGTON, *Oct.* 30, '76.

DEAR PET: When in his noon of manhood old Dodson was approached by Death and summoned to surrender. Dodson expostulated in being thus early taken off. A compromise was finally effected, by which Dodson was to have three warnings, after which he was to go without murmur when summoned. Years passed, when one fine morning Death again appeared. Dodson was not ready. He plead and told the tyrant that in sparing the aged would be a great kindness, and wound up by saying:

"Besides you promised me three warnings,
Which I have looked for nights & mornings."

Death informed him he had been extremely lenient in sparing him thus long, giving him every opportunity and plenty of time to see the world, hear the news of the day, and read for his amusement. Dodson replied that soon after their last interview he was afflicted with lameness to such a degree he could not travel; that of news there was none, and, if there was, he had grown so deaf he could not hear it, and failing eyesight precluded his reading. 416 "Well," says Death, "lame, deaf, & blind; here are three warnings." No reply could be made.

"And then old Dodson, turning pale,
Yields to his fate; so ends this tale."

My name is not Dodson; but I have received three warnings, and, unlike him, I shall heed them before the final summons. True, not having been promised them, nor consented to the shuffling off of this mortal coil upon their reception, I do not expect the same result; but still I intend to profit by them to the extent of putting my financial house in order.

One in whom I have every confidence got $15,000 from me by forgery. I don't know as one cent will ever be recovered. Scarcely had I got over that stunning intelligence before the telegraph told me another warning. Moulton had the confidence of every one here, both as to his integrity and pecuniary responsibility. He absconded, leaving his family (only a wife) destitute, carrying with [him] what is estimated to-day at $250,000. His victims are numerous. Some of them utterly ruined. No intelligence of his whereabouts. Doubtless, he is safe from pursuit. Forgery and other crimes are imputed
to him. He spared neither age, sex, friend, race, color, "or
417 previous condition of servitude." His liabilities to me indi-
vidually I find upon investigation are $8,965, and to the bank $3,130.00 more—one-half mine—making warning No. 2, $10,530. I will realize something, doubtless, but I can't say how much.

Severe as is the sting in Nos. 1 & 2 they are but flea bites compared with the third, the knowledge of which was deferred but a single day.

At the close of the war the rebel element in Missouri, as elsewhere, was prostrate. Laws inflicting the severest punishment were upon the statute-books awaiting enforcement. Life and property were both forfeited. They appealed for mercy and promptly received it. Everything was forgiven and blotted out. The ballot and eligibility to office was restored, and they were fully rehabilitated far beyond their expectations. The feast at their return from "feeding swine" followed rapidly upon the songs of triumph which attended their declaration of intention to "return to their father's house." Numerically they and their allies were largely in the ascendant in Mis-
souri and still are. Scarcely had they recovered from their
418 surprise at having a new suit put upon them and a ring upon
their fingers before systematic persecutions in ostracising in business, holding office, and various other ways began to be practised, and in some localities in the most offensive manner, which is still kept up, intensified in bitterness if possible by time.

Three years ago a man who had been caught stealing from me, and of whose guilt no possible doubt can exist, for he was caught in the very act, waylaid me on the street with the avowed intention of killing me. In it he was aided by his son. The attack was made as planned and only by an accident failed of success. Their intention to kill me was avowed, both before and after the assault. Personally I had nothing to do with either his arrest or trial beyond obeying the court's summons to give testimony. I much preferred to do the punishing in my own way upon recovering from the assault. He was, however, indicted in the county where we both live, and where I have lived for nearly thirty years. Every official in the county is politically his friend and the majority on the popular

419 vote is decided in the same direction. Notwithstanding this he comes in and swears, and proves it by two others, as the law requires, that my influence is so great in the county that he cannot get justice done him in the trial. That gave him a change of venue to some other county. Of all the counties in the State Monroe is the most benighted. It gave not five soldiers to the Federal army, and the vote there to-morrow week will be nearly unanimous for "Tilden, Hendricks, & Reform." Because of its Egyptian character and the political prejudices of the people the case was sent there to be tried. After worrying me for two years and a half by forcing me to attend as a witness (I never should have gone voluntarily), the case was tried last week and with the result that astonished no one from the day it was sent there. I think myself — in returning from there with my life. The jury was packed for the occasion and composed of the worst elements of its inhabitants.

The proof was positive, full, and conclusive. Not a word of
420 testimony in extenuation. The assault with pistol & rock was admitted and justified upon the ground of my war record and his sympathy with the jurors during the war, some of whom were in the Rebel army. The judge three times told the jury the law sustained the indictment, but he thought the law wrong. Popular opinion, he thought, was the better law. He was asked to give the jury an instruction in the very language of one he had given in another case in another county, and which had been affirmed by the Supreme Court, when he positively refused. The judge's name is Redd, which will explain what the word means in the enclosed slip. He displaced on the bench a Federal soldier who is a thousand times his superior in legal learning as in everything else honorable. The defending lawyer's name is Hatch, which will also explain that where it occurs. Hatch is a swaggering, drunken debauchee, who is hardly deserving a place on earth, but still the judge is his subservient tool. Hatch as completely manipulates him as the potter does the clay.
421 The jury returned in ten minutes with a verdict of not guilty.

The democratic candidate for Governor of Mo. is to be elected to-morrow week and sworn in soon afterwards by one who took an oath to support the Constitution of the U. S. one day and took up arms against it the next. This candidate for Governor is a man of some of the most infamous traits of character that humanity possesses. About the time he was nominated, in July last, on the steamer from Hannibal to St. Louis, after having spent until 2 a. m. in drinking and gambling, forced his way into a lady's sleeping apartment and grossly insulted her. A scene ensued that bid fair for a time to be serious, but was finally hushed up because of the political standing of the party. The papers opposed to him have teemed with denunciations of the affair ever since. Several conferences of democrats have been held with a view of having him decline, but without effect. He will be largely scratched at the polls, but will be elected. This will explain to you the circumstances which gave rise to the enclosed lines.

422 The trial was concluded Wednesday of last week, and I left for this city Thursday. Upon retiring to my berth, of

course, it was uppermost in my mind. Before morning I had these lines chalked out and, being detained in Cincinnati Friday, I put them to paper. It has gone to Missouri for publication. I am aware of your political education, but that matters not. I know you are not a bigot in anything; and, as you chose lit*t*erature for me, it is but fair I should give you knowledge of your pupil's progress; so here it is. It is void, but no exaggeration.

This is warning No. 3. If there was a lingering doubt in my mind upon receiving No. 1, as to the truth of "total depravity," it is removed now. I will confide in nobody from henceforth. Very costive are my "bowels of compassion" just now. It may result as did the last warning to Dodson. If it does not you may hear from me again, perhaps. If it does Bonnie will inform you; so I will bid you a respectful good night.

J. F. B.

Continued Wednesday, Dodson's friend not appearing.

423 EXHIBIT M. O. H., No. 2. J. S. Humbird, Notary Public.

MISSOURI, '66 TO '76.

1.

"Down with the traitors' bars,
The Nation's emblem raise;
All hail the Stripes and Stars,
Salute in earnest praise.
Proclaim the jubilee,
Peal forth in loudest strains,
For the banner of the free
No longer forges chains."

2.

"Flaunt not the crimson dye,
Garments of gore entomb;"
Such is the suppliant cry
From hearts in deepest gloom.
The banquet board is laid,
Wide is the open door;
The fatling feels the blade,
Bridged is the chasm o'er.

3.

The vanquished gain the town;
Allies confirm the claim;
The victors' laurel crown
Becomes a badge of shame.
Now, fling the flambeau high
And crowd the halls within,
For he who swore the lie
Now swears the libertine.

424 4.

Cast out the blue—deride
Scars from the deathly field;
The gray and *Redd* abide,
Hatched for the felon's shield.
What though the thief be bold,
The assassin's aim be true,
Let not the tale be told—
His victim wore the blue.

5.

The law we can't defy,
  In language plain 'tis dressed :
Mark you, "*Vox Populi,*
  Vox Dei" pleases best.
Of courts supreme beware ;
  The public will is strong ;
Go feel its pulse with care,
  Your stay need not be long.

6.

"Order in Warsaw reigns,"
  Bowed is the veteran's brow,
Frigid the patriot's veins,
  Heavy the burden now.
Unfurl again the bars,
  Once more proclaim the gray ;
Bright shines the Southern Stars,
  And treason rules the day.

425 *Agreement to Take Depositions.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

It is hereby agreed by and between King & Giles, attorneys for Geo. H. Benjamin and other heirs of John F. Benjamin, and B. F. Dobyns, attorney for Guy H. Allen and George C. B. Rowan, and P. B. Dunn, attorney for Joshua M. Ennis, that depositions as to the domicil of John F. Benjamin, the above-named testator, at the time of his death may be taken under the order of the court made in this case on the 24th day of January, 1880, at the law office of King & Giles in the city of Shelbina, in the county of Shelby and State of Missouri, on the 5th day of February, 1880, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon
426 of that day, and that the taking of said depositions, if not
completed on that day, will be continued from day to day at the same place and between the same hours until completed.

KING & GILES,
Att'ys for Geo. H. Benjamin and Other Heirs of John F. Benjamin.
B. F. DOBYNS,
Att'y for Guy H. Allen & Geo. C. B. Rowan.
P. B. DUNN,
Att'y for Joshua M. Ennis.

427 In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

It is agreed that depositions as to the domicil of the above-named testator at the time of his death may be taken under the order of the court made in this case on the 24th day of January, 1880, at any place in Shelby county, Missouri, that may in writing be agreed upon by Messrs. King & Giles, attorneys for George H. Benjamin, and by

B. F. Dobyns, Esq., attorney for Guy H. Allen and George C. B. Rowan, and by P. B. Dunn, attorney for Joshua M. Ennis, and that such depositions may be taken before any person authorized by the laws of Missouri to administer an oath, and at any time agreed upon by said King & Giles and said Dobyns, provided that they shall be taken within the time fixed by said order.

A. G. WORTHINGTON,
Attorney for Guy H. Allen & Geo. C. B. Rowan.
R. P. LOWE,
Attorney for Geo. H. Benjamin and Other Heirs.

428 *Agreement.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

It is hereby agreed by and between King & Giles, attorneys for George H. Benjamin, and B. F. Dobyns, attorney for Guy H. Allen and George C. B. Rowan, and P. B. Dunn, attorney for Joshua M. Ennis, that all objections, except the objection that the questions are leading, are to be considered as having been made at the proper time to all questions and cross-questions in the depositions hereto attached, and that these depositions are open to all such objections except that the questions are leading.

Shelbina, Mo., Feb'y 9th, 1880.

KING & GILES,
Att'ys for Geo. H. Benjamin and Other Heirs of J. F. Benjamin.
P. B. DUNN,
Att'y for Joshua M. Ennis.
B. F. DOBYNS,
Att'y for Guy H. Allen & Geo. C. B. Rowan.

429 Depositions of witnesses taken at the law office of King & Giles, in the city of Shelbina, county of Shelby, and State of Missouri, before me, the undersigned, J. Wm. Towson, a notary public within and for said county, on the 5th day of February, 1880, between the hours of 8 o'clock a. m. and 6 o'clock p. m., in a certain cause now pending in the supreme court of the District of Columbia, holding a special term for probate business, in the matter of the estate of John F. Benjamin, deceased, as to the domicil of said deceased, on the part of George H. Benjamin and other heirs of the said J. F. Benjamin, deceased.

R. P. Giles, of the law firm of King & Giles, appeared for George H. Benjamin and other heirs.

B. F. Dobyns appeared for Mrs. Guy H. Allen and George C. B. Rowan.

P. B. Dunn appeared for Joshua M. Ennis, ex'r of the will of J. F. Benjamin, deceased.

430 *Deposition of J. H. Fox.*

JOSEPH H. FOX, of lawful age, being produced, sworn, and examined on the part of George H. Benjamin and other heirs of said Jno. F. Benjamin, deceased, deposes and says:

My name is Joseph H. Fox; I reside in Shelbina, Missouri, and am 55 years old. I am administrator of estate of W. A. Poillon, dec'd, and am in possession of his papers and documents. I have examined among his papers for letters from John F. Benjamin to him. I made that examination yesterday. I found none. When the papers were first turned over to me I found letters from said Benjamin to him (Poillon), but they were burned, I guess. We examined the papers, and the appraisers and myself destroyed what we considered worthless. This was done by and in presence of J. W. Miller, A. R. Graham, and Jno. S. Preston. I do not not recollect of seeing any letters since. I yesterday examined all the papers I have of his.

Cross-examined by B. F. DOBYNS:

431 I am not very well acquainted with the writing of John F. Benjamin. I only know these letters were from him by seeing his name signed to them.

Redirect:

In yesterday's examination I found no letters signed by said Benjamin or purporting to be from him.

JOS. H. FOX.

Subscribed and sworn to before me on the day, at the place, and within the house first aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

432 *Deposition of Jno. W. Miller.*

JOHN W. MILLER, of lawful age, being produced, sworn, and examined on the part of George H. Benjamin and other heirs of Jno. F. Benjamin, deceased, deposes and says:

My name is Jno. W. Miller; my residence Shelbina, Mo; my age 44 years. I have lived in Shelbina 17 years. I received a letter from Jno. F. Benjamin not more than three months prior to his death. I cannot find the letter; it may be among some of the papers yet. I have made diligent search for it. Have looked through all papers among which it would likely be. The last time I saw it was shortly after Col. Benjamin's death. I was then at my house. It was among a lot of old letters. I was examining for the purpose of destroying what among my correspondence seemed useless. I read the letter several times. I remember a portion of its contents.

Q. State what were the contents you remember in relation to his intention to return to Missouri, if anything.

433 Objected to by B. F. Dobyns upon the ground-, first, because the question is leading; second, the loss or destruction of the letter is not sufficiently shown; third, that an intention to return to Missouri, not carried into effect, is not evidence of a change of domicil to Missouri.

A. He told me he should return to Missouri, and that he could not remain idle; that he undoubtedly should go into business.

Question No. 1 withdrawn.

Q. State that portion of the contents of the letter which you remember.

Objected to by B. F. Dobyns upon the grounds, 1st, that the question assumes that the letter contains matter relevant and material to the issue; 2nd, the loss and destruction of the letter is not sufficiently shown.

434 A. He stated he should return to Missouri, and that he would not remain idle, and that he should undoubtedly go into business, and if the business required any assistance he would certainly give me a place, as he knew of no one that would suit him better. That is all I remember at present—as being in the letter—in reference to his coming to Missouri.

Q. State whether Col. Benjamin was married; and, if so, where his wife remained when he was in business in Washington.

A. He was, and his wife lived in Shelbina, Mo.

Q. Where did she reside?

A. At "Vesper Place."

Q. Who built and owned "Vesper Place?"

A. Col. J. F. Benjamin.

Q. When was it built?

A. Do not remember exactly, but think it was in 1872 or 1873.

Q. State if he ever dwelt in that house; and, if so, how long.

435 A. He did, for 2 or 3 years, and from time of its completion till he went to Washington.

Q. What was done with the house when he went to Washington?

A. His wife remained in it.

Q. State whether the furniture, or any part of it, was removed at any time from time he went to Washington to his death.

A. Not to my knowledge. I cannot say.

Q. State what was your occupation during that time.

A. Station agent for the H. & St. Jo R. R., at Shelbina.

Q. State whether you would have known, as such agent, that the property had been shipped on the R. R.

A. I cannot say positively. There was a great deal of freight shipped from there that I knew nothing of, except by referring to my books, as I had a man employed to attend to that part of the business.

436 Q. Did you visit there during his absence?

A. Myself and wife went once or twice.

Q. Were you at Vesper Place at the time Col. Benjamin was buried?

A. I was.

Q. State about the time you took possession of "Vesper Place."

Objected to by B. P. Dobyns as immaterial and irrelevant.

A. I was there from M'ch 9, 1877.

Q. State how the house was furnished M'ch 9, 1877.

Objected to by B. F. Dobyns for the reasons last above stated.

A. The garret had nothing in — but old papers, letters, and books; the 2nd floor was well furnished in all rooms but one with carpets, bureaus, beds, bedding, & chairs, as to the sleeping-rooms; and the library with lounge, writing-table, chairs, and book-cases containing five or six hundred books; the bath-room had a bureau in it. The room spoken of as not furnished was servants' 437 room. The 1st floor parlor room had carpet, chairs, sofas, piano, large mirror, one clock, and paintings. The reception-room had chairs, paintings, étage, and one clock. The dining-room had paintings, chairs, tap., carpet, safe (iron), and clock. The safe contained silver-ware. The room west of dining-room had carpet, chairs, and the range. The house was heated by a furnace in the basement and lit with gas.

Q. Who was in charge of the house when you first went there?

A. Mrs. Benjamin.

Q. Who else, if any one, was living there?

A. Miss Hasbrook, her niece, and the servants, Gil Pickett and Joanna Pickett. Upon second thoughts, Joanna was not there when I first took charge.

Q. Do you know whether Gen. Benjamin returned to Shelbina during the time he was engaged in business in Washington?

A. I do.

Q. How often?

438 A. I remember twice.

Q. Where did he stop on these occasions?

[A.] At "Vesper Place."

Q. State whether you are the executor of Diana Benjamin, dec'd, wife of Jno. F. Benjamin.

A. I am.

Q. State whether as such executor you came into possession of letters of Mrs. Benjamin.

A. I did.

Q. State whether you are acquainted with the handwriting of Jno. F. Benjamin.

A. I am.

Q. State whether you have in your possession any letters from Col. Benjamin to his wife during years of 1876 and 1877.

A. Am not positive, but think I have not.

(Examination here suspended to give witness an opportunity to search for these letters.)

(Examination here resumed.)

439 Q. Have you, since answering last question, made search for the letters above referred to?

A. I have, and failed to find any.

Q. Where?

A. At Vesper Place.

Q. Do you know whether Mrs. Benjamin received any letters from Col. J. F. Benjamin during 1877?

A. I do not remember, but I think she did.

Q. Do you remember whether Mrs. Benjamin showed you a letter from Gen. Benjamin within a period of 3 or 4 months prior to his death?

A. I think she did.

Q. Did you read that letter?

A. I think I read it, or she read it to me; I don't remember which.

Q. Do you remember the contents of that letter, or any portion of it?

A. A portion of the contents.

440 Q. Did the portion you remember contain any reference to Gen. Benjamin's coming home from Washington?

Objected to by B. F. Bobyns, 1st, because the question is leading; 2nd, because the question assumes that this was his home.

A. It did.

Q. State what the letter contained upon that subject.

Objected to by B. F. Dobyns upon the ground- that the witness has not stated that he read the letter, and that the loss or destruction of the letter is not sufficiently accounted for.

A. He stated that he had reached the amount of $80,000, and that he was coming home; am not positive, but think he said he was coming home to spend balance of his days. Do not remember anything else.

Q. State whether Mrs. Benjamin prior to this time showed you any other letter from Gen. Benjamin to her.

A. I think she did.

Q. Did you read it?

441 A. I don't remember. I either read it or heard it read.

Q. Do you remember the contents of that letter, or any portion of it?

A. I remember a portion of it.

Q. State whether it contained any reference to Gen. Benjamin's coming back to Shelbina.

A. I think it did.

Q. State, if you remember, what the letter contained on that subject.

Objected to by B. F. Dobyns on the grounds last above stated.

A. To the best of my recollection, he said he had succeeded very well in collecting, and had, I think—am not positive—collected $29,000, and would start for Missouri; that is all I remember.

Q. When was the last time you saw these two letters?

A. It was during Mrs. Benjamin's last illness.

Q. In whose possession were they at that time?

442 A. I do not know, but in either Mrs. Benjamin's or Mr. D. B. Hasbrook's possession.

Q. State whether Mr. D. B. Hasbrook had access to Mrs. Benjamin's papers after her death; and, if so, for how long a time.

A. He had up to the time he left Missouri.

Q. Do you know whether, at the time he left Shelbina, he had possession of any letters from Gen'l Benjamin to his wife?

A. He had.

(By agreement further examination of this witness postponed to allow J. H. Gough, an old gentleman from the country, to testify.

J. WM. TOWSON, *N. P.*

443 *Deposition of James H. Gough.*

James H. Gough, of lawful age, being produced, sworn, and examined on the part of George H. Benjamin and other heirs of Jno. H. Benjamin, dec'd, deposes and says:

My name is James H. Gough; my residence, Shelby Co., Mo.; my age, 66 years. I was acquainted with John F. Benjamin in his lifetime, about twenty years prior to his death. I was a stockholder in Benjamin's bank, and had business with him as attorney. My impression is the last time I saw him alive was the last time he was here, before he was brought back a corpse.

Q. State if you had any conversation with him at that time in reference to his engaging in business in Shelbina again; and, if so, state what was said by him.

A. I met him at his residence in Shelbina, "Vesper Place," when he told me he intended, and had made the preliminary arrangements, to open a national bank in Shelbina, and requested me to take a small amount of stock in said bank. I promised to take 444 $1,000 worth of stock, and signed then and there some papers purporting to be drawn in Washington, which had reference to the opening of the bank. The idea held out to me, and he so stated, was that the bank would be opened in a short time.

Q. State whether he told you he would personally superintend the business of that bank?

Objected to by B. F. Dobyns, because, 1st, the question is leading, and because, 2nd, that any evidence or intention on [the] part of Jno. F. Benjamin to return to Missouri, not carried into effect, is not evidence of a change of domicil; this objection to apply to all evidence of such an intention to return.

A. He did.

Q. State whether at that conversation he made any reference to his return to Missouri; and, if so, state what was said by him upon that subject.

Objected to for reasons last above stated.

A. My impression is that I drew the inference from this conversation that he would return.

445 Objected to by B. F. Dobyns as not responsive to the question and as irrelevant and immaterial.

Q. State whether you had any other conversation with Gen. Benjamin, prior to this time and while he was in business in Washington, with reference to his citizenship in Shelbina; and, if so, state when the conversation was and what was said by him upon that subject.

A. About the time the trial of Hanly ended he said to me he had a mind to change his residence in consequence of public sympathy being against him and in favor of the other party. My impression is [that] in the last conversation, the one held the last time I saw him alive, his mind had undergone a change in that regard.

Cross-examined by B. F. Dobyns:

Q. What further reason, if any, did he give in that conversation which you had with him about changing his place of residence?

A. I do not remember any other.

446 Q. State, if you know, what Hanly was tried for.

[A.] For Hanly shooting Mr. Benjamin.

Q. Do you know when the trial of Hanly ended?

A. I do not.

Q. Do you know when the shooting occurred?

A. I do not. I consider that I have a poor memory as to dates.

Q. Do you know whether this shooting occurred before or after he went to Washington to go into business with Bigelow?

A. My impression is that it was prior. Wherever I have used the word impression I mean my recollection.

Q. Was this conversation in regard to his change of residence before or after he went to Washington in business with Bigelow?

A. I do not recollect.

447 Q. Have you any recollection as to the year when you had the conversation with him as to his going into [the] banking business here in Shelbina?

A. I do not recollect.

Q. Do you know he was not back here on a visit afterward?

A. I do not.

Q. Do you know why this business arrangement fell through?

A. I do not.

Q. Do you not know that he went back to Washington and remained quite a length of time after this conversation?

A. I do not know if it was several years or not that he remained in Washington, but do know that he went back and stayed some time.

Q. State, if you know, who else signed the business papers to which you refer.

A. I know of no one else signing them.

Q. Do you not know that at the time of this conversation he was in business in Washington?

A. That is my recollection.

448 Q. Where did you first become acquainted with Jno. F. Benjamin?

A. At Shelbyville.

Q. Do you know if he was a native of Missouri?

A. He stated to me he was a native of New York State.

Redirect:

Q. Do you remember the year in which Mr. Benjamin died?

A. I do not.

Q. Do you know how long it was prior to his death when this last conversation occurred?

A. I do not.

JAS. H. GOUGH.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

449 Not being able to complete the taking of these depositions on account of lateness of the hour, the further taking of the same is adjourned till to-morrow, to be continued at the place and between the hours mentioned in the annexed notice.

J. WM. TOWSON,
Notary Public.

FRIDAY, *February* 6, 1880.

Pursuant to adjournment, as above stated, the taking of these depositions is resumed and continued as follows:

JNO. W. MILLER being produced, his examination, postponed yesterday, was proceeded with, there being present: R. P. Giles, appearing for G. H. Benjamin and other heirs; B. F. Dobyns, appearing for Guy H. Allen and Geo. C. B. Rowan; P. B. Dunn absent.

450 J. W. MILLER recalled.

J. W. MILLER deposes as follows:

Cross-examined by B. F. DOBYNS:

Q. Do you remember the date of the two visits of J. F. Benjamin to Shelbina, to which you have referred?

A. I do not remember date of first visit; the second was in October, 1876.

Q. Do you remember date of his return to Washington when her- in 1876?

A. It was in October.

Q. Was he here at any time after this prior to his death?

A. I think not.

Q. How do you know that he (Hasbrook) had possession of letters from J. F. Benjamin to his wife when he, Hasbrook, left Missouri?

A. Mrs. Miller told me. I do not know that he took them.

Q. Have you given the exact language contained in the two letters which you say Mrs. Benjamin received from J. F. Benjamamin, or have you given your recollection of their purport? 451

A. Have given my recollection of their purport.

Q. Was the furniture at Vesper Place when you first went there such as to require the constant care and attention of some one?

A. Yes, sir.

Q. In what residence do you now reside?

A. Vesper Place.

Q. Is your recollection very distinct about the contents of those letters to which you have referred last?

A. It is not very distinct.

Q. What, if you know, was the condition of Mrs. Benjamin's health when she received those two letters?

A. It was very poor.

Q. Do you know what time Miss Hasbrook came to Vesper Place?

A. In the fall of 1876.

JOHN W. MILLER.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.]

J. WM. TOWSON,
Notary Public.

452 *Deposition of Wm. Reid.*

WILLIAM A. REID, of lawful age, being produced, sworn, and examined on the part of George H. Benjamin and other heirs of J. F. Benjamin, deceased, deposes and says:

My name is Wm. A. Reid; my residence is in Shelbina Mo.; my age is 51 years; my occupation, banker.

Q. State whether you were acquainted with Gen. John F. Benjamin.

A. I was.

Q. State whether he had a family; and, if so, of whom it consisted.

A. So far as I know, of himself and wife, Diana Benjamin.

Q. Do you know where his wife resided while he was engaged in business in Washington?

A. At Vesper Place, Shelbina, Mo.

Q. Do you know whether Gen. Benjamin furnished his wife with any money while he was absent in Washington? If so, state when and what amount.

453 Objected to by B. F. Dobyns as immaterial and irrelevant.

A. I do. He furnished her various amounts at different times. He made deposits to her credit; the last two I remember were in Oct., '76, and Jan'y, '77. That in Oct., '76, was $500; and that in Jan'y $100. The first was deposited by him in person. That is the first of these last two. That in Jan'y, 1877, by draft drawn in his favor and endorsed to her.

Q. State whether the money deposited to her credit was paid out to Mrs. Benjamin by Gen. Benjamin's direction.

A. All these various sums were drawn by her, except $200 drawn by himself out of the above-named $500. They were paid out to her by his direction.

Q. Do you know whether he returned to Shelbina during his business engagement in Washington? If so, state how often.

A. I think twice a year, possibly oftener.

454 Q. Do you know where he stayed while in Shelbina; and, if so, where?

A. At Vesper Place, in Shelbina.

Cross-examined by D. F. DOBYNS:

Q. In what year did he go to Washington to go into business?

[A.] In the fall of 1874, I think.

Q. Was he back here during that year?

A. I am not able to say. Upon second thought, I will say he was here during that year and after he reported to me he had formed the business copartnership with Bigelow.

Q. How often was Gen. Benjamin here in 1875?

A. I think at least twice—in the spring and fall.

Q. How long did he remain in the spring of 1875?

A. I do not remember.

Q. How long did he remain in the fall of 1875?

A. I do not remember.

455 Q. Do you know in what month he returned to Washington in fall of 1875?

A. I do not.

Q. How often was he here in 1876?

A. I think twice—once in spring and once in fall.

Q. Do you know how long he remained on either visit?

A. I do not.

Q. Do you know in what month in fall of 1876 he returned to Washington?

A. I do not.

WM. A. REID.

Subscribed and sworn to before me on the day, *in* the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

456 *Wm. A. Reid Recalled.*

W. A. REID, recalled by agreement, deposes and says:

Q. State whether you had a conversation with Gen. Benjamin in 1876 in which reference was made to the building of a court-house at Shelbina; and, if so, state where the conversation took place, and what was said by him on that subject.

Objected to as immaterial and irrelevant.

A. I did; and think it was in 1876. It was in our bank, and perhaps at other places. I know I had several conversations. He said in substance he was very anxious to have the court-house built here, and alluded to his business and practice as necessary to have easy access to the court records. He said Shelbina had better donate the money to erect the public buildings, and that he would give $5,000 toward it and toward removal of the county seat.

457 Q. Do you have any knowledge whether he subscribed any sum towards the erection of the building spoken of at Shelbina, Mo.? If so, state the amount.

A. Yes; he subscribed $5,000.

Q. Do you know who drew up the subscription papers for the building of that court-house? If so, state who it was.

A. My recollection is he wrote them himself—that is, that Gen. Benjamin himself wrote them and subscribed the $5,000.

Cross-examined:

Q. What time of the year was this subscription made?

A. I think it was in the spring.

Q. Do you know what became of those papers?

A. I delivered them to Gen. Benjamin, probably during the fall of that year.

Q. What names, if any others, were on that paper?

A. None.

458 Q. Was any court-house built at Shelbina as a result of that subscription?

A. No.

Q. Did Gen. Benjamin have valuable property here at that time?

A. He had.

WM. A. REID.

Subscribed and sworn to before me on the day, *in* the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

459 *Deposition of J. S. Chandler.*

JOHN S. CHANDLER, of lawful age, being produced, sworn, and examined, deposes and says:

My name is J. S. Chandler; my residence, Shelbina, Mo.; my age, 37 years; my occupation is postmaster at Shelbina; my occupation was assistant postmaster during 1876 & 1877; I was acquainted with Col. J. F. Benjamin and acquainted with his handwriting; was acquainted with W. A. Poillon, deceased, intimately.

Q. State whether you saw a letter from Gen. Benjamin to W. A. Poillon during 1877; and, if so, state as near as you remember.

A. I did, and think it was in the winter before his death, in the winter of '76 & '77.

Q. State how long before his death.

A. Two or three months.

Q. State whether that letter was shown you upon its receipt by Capt. W. A. Poillon; and, if so, whether you read same.

A. Yes; it was shown me, and I read it.

460 Q. Do you remember any portion of its contents?

A. I do. I do not remember the wording of the letter, but its purport.

Q. Do you remember whether it contained anything about his coming back to Missouri?

A. I do.

Q. State what that letter contained on that subject.

Objected to by B. F. Dobyns, because, 1st, that any evidence of an intention on the part of Jno. F. Benjamin to return to Missouri, not carried into effect, is not evidence of change of domicil; 2nd, that the loss or destruction of said letter is not sufficiently established; 3rd, it is immaterial and irrelevant.

A. He stated that he was closing out his business there and intended to return to Shelbina.

Q. Have you any knowledge of what became of that letter?

A. I have not.

461 Q. Do you remember if the letter stated at what time he would return to Shelbina?

Objected to by B. F. Dobyns upon same grounds as above given.

A. I do.

Q. What did it contain upon that subject?

Same objection as above.

A. He stated he would return as soon as his business could be wound up there. By "there" I mean Washington city.

JOHN S. CHANDLER.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

462 *Deposition of Alexander R. Graham.*

ALEXANDER R. GRAHAM, of lawful age, being produced, sworn, and examined, deposes and says:

My name is Alexander R. Graham; my residence, Shelbina, Mo.; my age, 45 years; occupation, farmer. I was acquainted with the late Gen. J. F. Benjamin for 20 years prior to his death. I saw him when he was in Shelbina the last time prior to his death, which was some three months prior to his death.

Q. State whether you had a conversation with him during that visit with reference to his return to Shelbina.

A. Yes.

Q. State when and where that conversation occurred and what was said by him on that subject.

Objected to by B. F. Dobyns on the grounds, 1st, that any evidence of an intention on the part of Jno. F. Benjamin to return to

Missouri, not carried into effect, is not evidence of a change of domicil; 2nd, it is immaterial and irrelevant.

463 A. It occurred at his house, Vesper Place; he was speaking of his return to Washington in a day or two. I asked him when he would be back; his answer was he could not say positively, but in two or three months. "I am winding up my business as fast as I can." I then asked him if he was going to stay with us for good, or words to that effect. He said, "Yes." This is all I recollect at that time.

Q. State whether you had any other conversation with him during that visit in which reference was made to his engaging in business in Shelbina; if so, state what he said upon that subject, and when and where the conversation occurred.

A. Yes; either in his or my own house. I think I asked him whether he intended starting a bank in Shelbina. He answered, "Perhaps I will." He said something about the feeling here against him, but do not remember just what it was, except that the feeling was against him.

464 (All that part of above answers in which the witness details his own conversation is objected to as not responsive to the question.)

Cross-examined by B. F. Dobyns:

Q. Do you know in what month he made that visit here and when he returned to Washington?

A. I am not positive as to the month; some two or three months prior to his death.

ALEXANDER R. GRAHAM.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

465 *Deposition of C. M. King.*

C. M. King, of lawful age, being produced, sworn, and examined, deposes and says:

My name is Charles M. King; my residence, Shelbina, Mo.; my age, 46 years; my occupation, attorney-at-law.

I was acquainted with the late Gen. Jno. F. Benjamin and had known him prior to his death thirty-two years. Was intimately acquainted with him since 1848. Am well acquainted with his signature and handwriting.

Q. State what, if anything, you heard Gen. Benjamin say as to changing his residence prior to engaging in business in Washington.

A. In 1873, some time in August, he had a personal difficulty with a citizen in Shelbina. Benjamin was shot and wounded by him. This was some two years after he built Vesper Place, in Shelbina. In the excitement growing out of this difficulty he talked of pulling down his house and removing it from the county. This is all the conversation I had with him on that subject prior to his going into business in Washington.

466 Q. State when, if ever, did he again mention the subject of change of his residence from Shelbina.

A. On the 19th or 20 day of March, 1875, I received a letter, bearing date March 17, 1875, in which he mentioned the matter.

Q. Have you that letter?

A. I have.

(Letter here produced, marked C. M. K., Exhibit No. 1, and attached to this deposition.)

EXHIBIT C. M. K., No. 1.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers.

WASHINGTON, D. C., *March* 17, 1875.

C. M. King, Esq., Shelbina.

DEAR CHARLEY: I have this day sold "Vesper Place." I wish you to prepare a deed (warranty); have Mrs. B. sign & ack. and send to me. Grantee, Mrs. Mary E. Schoolcraft; consideration, $30,000 (thirty thousand dollars). I also want you to send me a complete abstract of the title (out lot 48), certifying under your notarial seal that the title is full and complete (taxes & all) in 467 me.

This is the way of abstracting here, and strangers want to know all about the title and in the way they are educated in. I also wish you to send me a blank deed of trust. The forms here won't suit for Mo. Please do all this as soon as possible.

I shall not be in Shelbina until I come to move.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 1), J. Wm. Towson, notary public.

[A.] I also received a letter from him, dated Mch. 28, 1875, in which he mentioned his intention to move.

(Letter here produced, marked C. M. K., Exhibit No. 2, and attached to this deposition.)

EXHIBIT C. M. K., No. 2.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers.

WASHINGTON, D. C., *March* 28, 1875.

468 DEAR CHARLEY: Yours with the deed, abstract, &c., came safe to hand yesterday. I am very much obliged for the prompt & faithful manner in which you have attended to the matter. I will make it all right after awhile.

You speak of unpaid taxes. I presume you forgot to inclose receipt. I was not aware of any taxes unpaid, and I think there must be some mistake. It looks as if 'twould be doubtful about my being at the Monroe court. I can't come to Shelby but once this spring, and think I must be at the Shelby court in May, at which time I will move. Too long a time intervenes between the *too* for me to be absent from here. I am pressed very much with my business here.

Again accept thanks.

Respectfully yours, J. F. BENJAMIN.

C. M. K., Exhibit No. 2. J. Wm. Towson, notary public.

[A.] In April, 1875, he was here to attend the Paris term of court, at
which time I had a conversation with him in reference to
469 his moving to Washington city. He said that the sale or
trade of his property here he presumed was a failure, and if
it proved to be such he should not move. That he did not expect to move from here unless he sold Vesper Place. He was here again at Paris term of court in fall of 1875, when I had several casual conversations with him in reference to that matter. He said in one of them, and perhaps in more, that Mrs. Schoolcraft had failed to make the arrangements for the money and it was abandoned, and he had abandoned the idea of moving from Shelbina.

Q. Have you received other letters than those produced, during his business engagement in Washington, bearing upon the question of his domicil?

A. Yes; I have several in which he refers to coming to Shelbina, and to it as to his home. I received the following letters, which are in his handwriting, directed to me, and reaching me by due course of mail.

470 (Letters here produced, marked "C. M. K., Exhibit No. 3,"
"C. M. K., Exhibit No. 4," "C. M. K., Exhibit No. 5," "C. M. K., Exhibit No. 6," "C. M. K., Exhibit No. 7," "C. M. K., Exhibit No. 8," "C. M. K., Exhibit No. 9," "C. M. K., Exhibit No. 10," and attached to and made a part of this deposition.)

J. WM. TOWSON,
Notary Public.

EXHIBIT C. M. K., No. 3.

Otis Bigelow. John F. *Bigelow.* Bigelow & Benjamin, bankers.

WASHINGTON, D. C., *Oct.* 22, 1874.

C. M. King, Esq., Shelbina.

DEAR SIR: Yours of the 19th just received. You did exactly right in the Lake case. I have done negotiating in the matter, and have no further offers to make. If Lake will immediately pay or secure ¼ of the debt and trust deed on the land for ¾, including interest 10 per cent. and all costs, take it, but don't wait for him. I have a chance to trade the land for property here. Record the deed
and send it to me. I have written Ennis to draw on me
471 for the costs. I am under great obligations to you for your
attention to it.

I will not be home in November; can't leave my business. You need not go to Paris. Write the clerk that I will probably be there at the spring term. Give Hiles 30 days.

Very respectfully, J. F. BENJAMIN.

C. M. K., Exhibit No. 3, J. Wm. Towson, notary public.

EXHIBIT C. M. K., No. 4.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *Aug.* 4, 1875.

C. M. King, Esq., Shelbina.

DEAR CHARLEY: I rec'd yours of the 18th some days since. Glad to hear from you. I expect you are busy, and doubtless you prefer to be so; it brings to you a suitable return. Your large practice certainly affords you plenty of employment, and ought to bring you a rich harvest.

472 Glad to hear your commissionership is also paying you something.

Sue Barker if he does not pay—sue wife and all. He is treating me shabbily. I will be home in time for Paris court, but I don't want them to know that I will be there, or they will not be ready. I would be ready, to-, — I in your place, for Lipscomb may not be on hand.

Of course, I have no news to tell you that will interest you.

I am as busy as it is possible to be, and, indeed, more pressed for time than ever before. Hope to be able to shuffle off some of it after awhile. Hope to hear from you often. Have heard nothing of the doings in court after I left.

Thank you for the Democrat.

Truly yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 4), J. Wm. Towson, notary public.

473 EXHIBIT C. M. K., No. 5.

Otis Bigelow. John F. *Bigelow.* Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *Aug.* 12, 1875.

DEAR CHARLEY: I am in receipt of yours of the 4th inst. I don't recollect of ever noticing the Winter deed.

I have it with my other title papers in Shelbina. I will be home in a couple of months, when I will give it an examination. I thank you for your kindness in calling my attention to it.

I have nothing new to write you. Business is as usual. Many thanks for the newspaper.

Respectfully yours, J. F. BENJAMIN.

C. M. K., Exhibit No. 5, J. Wm. Towson, notary public.

474 EXHIBIT C. M. K., No. 6.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *Dec.* 18, 1875.

DEAR CHARLIE: There is no charge for the statutes. Am glad they arrived safe. I shall be at home some days prior to the sitting of the Monroe court, when we will counsel as to the Hanley trial. I trust it will come of- then.

Your letter was the first I had seen as to the Shelby court. It seems but little of the civil docket was disposed of.

I am well & business as usual. Regards to friends.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 6), J. Wm. Towson, notary public.

475 EXHIBIT C. M. K., No. 7.

Otis Bigelow. John F. *Bigelow.* Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *Feb.* 23, 1876.

DEAR CHARLEY: Yours of the 17th came to hand in due time. I also rec'd one from you some time since, of which you make mention.

Really there is so little that I know anything about going on here (save what you see in the papers) that I have no material to make up a letter. My business keeps me more closely confined than ever before. It engages my entire time, and my whole attention is given to it. The result of it is all I could desire.

I receive the Democrat from you regularly, for which you have my thanks. It (the Dem.) left the bank out in its notice of Shelbina institutions, from which I had a right to infer "the woodbine was twining" somewhere about there. The theme was a good one to base a commisserating letter on to Reid. I suppose from what you say you heard of it. Reid and also Dan. Taylor an-
476 swered, making some very good points on me.

At what time is the Paris circuit court? I will be home & trust the case will be tried then.

It will not if they can prevent it. I will be happy in hearing from you often. Regards to friends.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 7), J. Wm. Towson, notary public.

477 EXHIBIT C. M. K., No. 8.

Otis Bigelow. John F. Benjamin. Bigelow and Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C. *March* 21, 1876.

DEAR CHARLEY: Yours of the 18th received. I will be at home about the 15th, but not in time to look after the witnesses. I wish you would do that for me; see that they are all subpœnaed who are not recognized.

Weather been very cold and disagreeable. Hope to see you before many week- passes by.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 8), J. Wm. Towson, notary public.

478 EXHIBIT C. M. K., No. 9.

WASHINGTON, D. C., *Sept.* 10, '76.

DEAR CHARLEY: I have no chance to examine the question as to Smith's testimony. Have not even a Mo. statute in reach.

I shall be home a sufficient time before Paris court to look up all questions connected with the case. You may be prepared to see me at any time after this week.

Respectfully yours, J. F. BENJAMIN.

EXHIBIT C. M. K., No. 10.

WASHINGTON, D. C., *Sept.* 25, '76.

DEAR CHARLY: Yours of the 21st just rec'd. I shall be home some time next week. If I can possibly arrange my affairs here I shall remain over the Shelby court. Can't say positively now.

I have $18,000 Howard county bonds which are said to have been forged.

479 I expect such is the fact. I hold them, however, as collateral. I may and may not lose in the transaction.

It is in train of settlement from which I hope to be indemnified.

Respectfully yours, J. F. BENJAMIN.

C. M. K., Exhibit No. 10, J. Wm. Towson, notary public.

[A.] I have still two other letters, one directed to me, dated July 9th, 1876, and one directed to firm of King & Giles, dated June 16, 1876, both written by Gen. Benjamin. When he was here in the spring of 1876, attending court in April, I had a conversation with him, in which he stated he was going to wind up his business in Washington and would resume the practice of law here. We had an understanding together when he did resume we were to practice together.

480 (The two letters above referred to produced, marked C. M. K., Exhibit No. 11, and C. M. K., Exhibit No. 12, and attached to this deposition.

J. WM. TOWSON,
Notary Public.

EXHIBIT C. M. K., No. 11.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *June* 16, 1876.

Messrs. King & Giles, Shelbina.

GENTS: Mr. Pearson, trustee for Meaux, has written to me rela-

tive to your fee in the bond case. Mr. P. paid me $50.00 to defend it when the case was first commenced. When I left for Washington I gave a list of my cases that were to be tried to Lipscomb as well as yourselves—telling Lipscomb how they stood—which I had received fee in & which not. Many of them he was already associated with me in. When the fee was not paid he was to collect it & keep it, which he did in one (the Pearsons-Brown
481 case, $150.00). I expected him to attend to the Meanx case, and supposed he was doing so. I also told you to look generally to all my cases, a sort of carte blanche in everything.

I am glad to learn of the result of it, but I don't want Mr. P. to pay any additional fee, as he has paid me enough already. If he has not already paid you don't call on him and I will arrange it with you. I expect we will have many cases together from henceforth.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 11), J. Wm. Towson.

EXHIBIT C. M. K., No. 12.

Otis Bigelow. John F. Benjamin. Bigelow & Benjamin, bankers,
605 Seventh street.

WASHINGTON, D. C., *July* 9, 1876.

DEAR CHARLEY: Yours received. Thank you very much for fixing things with Pearson. I will make all right with you.
482 Give yourself no trouble about Mo. Reports. When I return I shall not be far from you. If not in the same office, not far off. It will take some time to wind up my business here, & I shall not be in Shelbina probably before October. I have not fully determined upon it and may continue connection with the banking-house here, alternating my time here and in Mo. Can't say as to that yet.

Weather very warm. Have not yet been to the Centennial. Will not before Sept., if then.

Respectfully yours, J. F. BENJAMIN.

(C. M. K., Exhibit No. 12), J. Wm. Towson, notary public.

Q. State whether you saw Gen. Benjamin during his last visit to Shelbina.

A. I did.

Q. State whether you were with him at the sitting of the circuit court at Paris, Mo., in the fall of 1876.

483 A. I was. The court was held the 4th Monday of October and the Tuesday and Wednesday following.

Q. State whether you had a conversation with him at that time with reference to his returning to Shelbina; if so, state when and where it occurred and what was said by him on that subject.

(Objected to.)

A. I had, on Wednesday of that week, while the instructions were being given by the court, and as he was about to leave Paris he sent for me. I found him about to get into a wagon to go to Shelbina.

He said he had just got a telegram from Washington requiring his presence there, and that he wanted to talk with me about our matters before he left. I told him we were just then submitting instructions, and I could not leave. He said "very well;" that he would have to go; that he was winding up his matters in Washington; that he would be away perhaps two months; that he was collecting up his money, and would not be away from home, except
484 temporarily, any more. This was all on that subject.

Not being able to complete taking of these depositions, on account of lateness of the hour, the further taking of the same is adjourned till to-morrow, to be continued at the place and between the hours mentioned in the annexed notice.

J. WM. TOWSON,
Notary Public.

SATURDAY, *Feb'y* 7, 1880.

Pursuant to adjournment, as above stated, the taking of these depositions is resumed and continued as follows, there being present: R. P. Giles, appearing for G. H. Benjamin and other heirs of J. F. Benjamin, dec'd, and B. F. Dobyns for Guy H. Allen and Geo. C. B. Rowan:

C. M. King'- Testimony Resumed.

C. M. KING, whose examination was suspended for adjournment, being produced, proceeded with his examination, and deposes and says:

485 Q. Do you know how often he returned to Shelbina during his business engagement in Washington? If so, state it.

A. Very nearly. He left here the latter part of August or 1st of September, 1874. He returned some time in Sept., the latter part, and remained but few days, leaving here for Washington about the last days of September. He returned again in April, 1875, and in October, 1875, and April, 1876, and in October, 1876. And during the time he returned once, when there was no court in this circuit, to attend court at Macon.

Q. Do you know how long he remained on the occasion of these different visits and where he stayed while in Shelbina? If so, state.

A. He usually remained from 10 days to 3 weeks. I think in the October term, '76, he was here about three weeks. He was here some time before court. He stayed at Vesper Place.

Q. State who resided at Vesper Place during Gen. Benjamin's business engagement in Washington.

A. His wife.

486 Q. Do you know whether he furnished her with any money during his stay in Washington? If so, state when and what amount.

A. I know of his furnishing her none; by his direction I furnished her money, which was money I had collected for Col. Benjamin; I paid her, Dec. 29, 1874, $140.75; Feb'y 19th, 1875, $50.15; Sept. 7, 1875, $30.75; Feb'y 16, 1877, $11.00.

Q. State whether during [the] fall of 1876 you had a conversation with Gen. Benjamin with reference to his subscription to the building of a court-house at Shelbina; if so, state when and where the conversation occurred and what was said by him on that subject.

A. I had a conversation with him in October, 1876, in my office of King & Giles, Shelbina, Mo.; I had seen the subscription, with his signatures, prior to his return here; I asked him if he had not signed it; he said he had; that Reid and Taylor had not done the fair thing with him about it; that they had used the subscription with his name to it, but [had] not signed their own names, as
487 they agreed to, and it left him to be blamed without their being a party to it.

Q. Do you know whether these pictures were hung at Vesper Place in 1876?

A. I do not.

Q. State whether you had a conversation with Gen. Benjamin in 1876 in reference to [the] purchase of pictures by him for Vesper Place; if so, state when the conversation occurred, and what was said by him.

A. I did; while he was here he occupied the north room of our office in Shelbina; I had a conversation with him in April, 1876, in the north room of our office; he came in and said he had been putting up paintings at Vesper Place; that he had just finished putting up paintings that cost him more money than he brought to Shelby county with him in 1848.

Q. Do you know when Gen. Benjamin moved to Shelbina?

A. I think it was late in [the] summer or fall of 1870.

488 Q. What business did he engage in?

A. Very late in that winter of '70 or early in spring of 1871 he became one of the stockholders and opened a national bank in Shelbina.

Q. When and by whom was Vesper Place built?

A. Gen. Benjamin built it, and my recollection is it was early in the year 1872. It was begun in fall of 1871.

Q. When did he first occupy it?

A. He occupied it in latter part of 1872 or early in 1873.

Q. State whether you were a visitor at Vesper Place during the years 1873, '4, '5, and '6; and, if so, how often you called.

A. I was. During the time of Benjamin's stay here, during the sessions of the courts, I was there almost every evening, except when he was away at court. During his absence in Washington my wife and self visited there frequently.

Q. State whether the house was furnished before he went to Washington to engage in business; and, if so, whether you
489 noticed any change in the furniture after he left.

A. The house was furnished at the time he moved into it, to all appearance. I noticed no change except that when he returned from Washington he usually brought some article for the house. At one time he showed me a piano; at another a very fine music-box. At another time I noticed quite a number of pictures—oil paintings—in the rooms that he said he bought. In the spring of 1876 I first noticed them.

Q. Do you know whether there was a library at Vesper Place prior to his leaving for Washington in 1874? If so, state the number of volumes it contained and whether any part thereof was removed to your knowledge while he was absent in Washington.

A. There was a library there—cases made and attached to the walls. The cases were full; should judge there were between 500 and 1,000 volumes. During the time he was doing business in Washington I had occasion frequently to consult volumes in his library, and never noticed any change.

490 Q. Do you know D. B. Hasbrouck?

A. I do.

Q. Do you know whether he examined or took possession of any of the private papers of the late Gen. Benjamin? If so, state where and when.

A. I do; somewhere between the 10th and 18th of March, 1877, I think; it might have been later. Mr. Hasbrouck came to the office of King & Giles. Col. Benjamin had left in my charge his two law-book cases and one table with private drawer. The drawer seemed to be full of private papers. It was the private property of Gen. Benjamin. The upper shelf of the large book-case was entirely filled with filed papers, many of which seemed to be papers relating to 1st Nat. Bank of Shelbina. I did not know the nature of the other papers. After a thorough examination of them Mr. Hasbrouck packed them up and took them away, including everything in the private drawer.

Cross-examined by Mr. Dobyns:

491 Q. Did Hasbrouck get those papers upon any order from the executor of John F. Benjamin?

A. He did not. My recollection is he got them representing that he got them on authority from Mrs. J. F. Benjamin. My recollection is the will had not then been probated.

Q. Did you read the court-house subscription paper?

A. I think I did; I remember seeing it.

Q. Were the subscriptions conditional upon raising a given amount?

A. My recollection is they were 40 or 50,000.

Q. Was Jno. F. Benjamin a practising attorney here when he went into business in Washington?

A. He was and had a number of cases in court; had for 18 months been reducing his practice and winding it up.

Q. Did he not turn over all of his practice to yourself and Mr. Lipscomb when he left here?

A. A greater portion of it. He turned it all over to Mr. Lipscomb, myself, and other members of the bar; he, after this, never attended another session of the Shelby circuit court.

492 Q. Did he, after leaving here, attend a session of any other court in this circuit as a practising attorney?

A. He did not to my knowledge; he attended one session of the Macon court.

Q. What was the occasion of his attending the Paris circuit court?

A. He was witness in [a] case of assault with intent to kill made upon him, taken by change of venue from Shelby circuit court.

Q. When was that change of venue taken?

A. It was taken at the spring term of Shelby court, 1874.

Q. When did that trial end?

A. At the October term, 1876.

Q. Was Gen. Benjamin under a recognizance to attend as witness at that trial?

A. I think not.

Q. Did he attend at each term of the Paris circuit court as a witness from the time the venue was changed until the trial?

493 A. He did not. He attended each term but the fall term, 1874.

Q. Was he here in the month of November, 1874, '5, or '6?

A. He was not here in November, 1874. He left here very late in October, in the year '75, or else very early in November. I think he left in [the] latter part of October, in '76.

Q. Were not a large number of the volumes contained in his library at Vesper Place reports and Congressional Globes and diplomatic correspondence?

A. There were in the library quite a large number of volumes of Congressional Globes and diplomatic correspondence; think there were but few Congressional reports.

Q. Were there not a great many books in that library of little value?

A. There were a great many of but little value except to public men.

494 Q. In the conversation which you had with him about pulling down Vesper Place, did he say anything about the public feeling in this county, or in this community, being against him?

A. I think he did.

Q. What did he say?

A. I think it was during the excitement here about Hanly shooting him. I think he said if the people here did not want him here he would leave, and if he did he would tear down Vesper Place, brick by brick, and ship it away from here. He spoke of it several times after the shooting occurred and during the year 1873.

Q. Did not the shooting of Gen. Benjamin by Hanly give rise to the expression of a good deal of feeling on the part of Benjamin's enemies in the county against him?

A. It did

Q. Did you have any conversation with Gen. Benjamin in the year 1874, and before going into business in Washington, and about his going into business there?

A. No, sir.

495 Q. When was it you had the conversation with him about the sale of Vesper Place to Mrs. Schoolcraft having fallen through?

A. It was both in April and October, 1875, I think.

Q. Did you have any conversation with him in the year 1876 relative to the sale of Vesper Place to any one?

A. No, sir.

Q. Do you know of his having made any effort to either sell or trade Vesper Place in the year 1876?

A. No, sir.

Q. Can you state in what month and what year he returned when he returned here and did not come to attend court?

A. I cannot.

Redirect:

Q. Do you know upon whose application, [in] the State case against Hanly, in which Gen. Benjamin was a witness, the change of venue was taken from Shelby county?

A. I do.

496 Q. State whose.

A. Upon that of James Hanly, the defendant.

Q. Upon what ground was the application based, if you know?

A. It was alleged in the application that in Shelby county he could not have a fair trial on account of the prejudice against him by the people of the county.

Q. Do you know whether the State resisted the application?

A. Yes; I do. It did.

CHAS. M. KING.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

497 *Testimony of Gilbert Picket.*

Also GILBERT PICKET, of lawful age, being produced, sworn, and examined, deposes and says:

My name is Gilbert Picket; my residence, Shelbina, Mo.; my age, 40 years; occupation, laborer.

Q. State where you lived and what was your occupation from year 1873 to 1877.

A. Was working for Col. Jno. F. Benjamin at his place in Shelbina, taking care of his horse—working in the house and yard.

Q. State whether you remained there while Gen. Benjamin was absent in Washington.

A. All the time.

Q. Do you know whether he returned to Shelbina while he was engaged in business in Washington? If so, state how often, how long he remained, and where he stopped.

A. Yes. He left in 1874 and came back in spring of 1875. He remained, the time he was here, at Vesper Place, staying about two weeks. He next returned in the fall; he stopped at Vesper 498 Place here; he remained same length of time. He came again in the spring, stopping at Vesper Place—in spring of

1876—about same length of time. He came home in the fall again, stopping at Vesper Place; he remained about two weeks. This was the last visit he made.

A. State whether during his last visit you were present at a conversation between him and his wife in which reference was made to his returning to Missouri; if so, state what was said by him upon that subject; also state when and where this conversation occurred.

A. Yes; I heard him tell his wife about coming to Missouri; he told his wife he would be home Christmas to spend Christmas week with her, if it were possible for him to get there; that if he did not get there by that time he would have his business all wound up by M'ch 1st, and come home to stay and repair the house; they talked in the dining-room at Vesper Place.

Q. State whether during that visit you were present at any
499 conversation between Gen. Benjamin and his wife in which
reference was made to the building of a grape-arbor at Vesper Place; and, if so, state where the conversation occurred and what was said by him on that subject.

A. Yes; I was present at the conversation; it was on the south walk; we were measuring the ground; he talked of building it during the summer, but said he feared Butler would not build it according to orders without his being there; he said, We will let it go till I come home in the fall.

Q. State what time this conversation took place?

A. It was in April, 1876.

Q. State whether you were present at any other conversation between Gen. Benjamin and his wife during year 1876 in which he alluded to making improvements at Vesper Place; if so, state when and where this conversation occurred and what was said by him upon the subject.

A. I was present when they were talking about repairing the
house. He went on to state how much it would cost him;
500 said it would cost him $5,000. He said [he] had laid down
that much of his earnings in one pile to repair certain parts of it with rosewood. That was in the hall at Vesper Place. I had hold of a tape-line at one end and he at the other, measuring the walls. He said he would repair the vestibule with rosewood. In the fall of 1867, it was the last visit he made—I mean the fall of 1876.

Q. State whether you know of Gen. Benjamin's bringing any pictures to Vesper Place during the year 1876; if so, state what number and at what time?

A. Yes, I was present when those pictures came. There was one came in February, 1876; there was another came same month; then in March there was two large packages come. That is all of them.

Q. Do you know who hung those pictures? If so, state who and when.

A. Yes, I know; Mr. Butler and Gen. Benjamin, in April, 1876.

501 Q. Do you know whether Gen. Benjamin in the year 1876 brought to Vesper Place a picture of his wife? If so, state when.

A. He did not fetch it, that I know of.

Q. Were you present at a conversation between Gen. Benjamin and his wife during 1876 in reference to the portrait of his wife? If so, state what was said by him.

A. I was not present.

Q. Do you know whether there is a portrait of Mrs. Benjamin in the parlor at Vesper Place?

A. Yes; I do.

Q. Do you know who hung the same?

A. Yes; Jno. F. Benjamin himself hung it in [the] spring of 1876.

Q. State whether you were at Vesper Place when Gen. Benjamin left for Washington to engage in business?

A. Yes, sir; I was there.

Q. Do you know what goods or property he took from Vesper Place on that occasion? If so, state what it was.

502 A. I know he never took any goods. I know of no property: I went to the train with him, and he had nothing but a companion.

Q. Do you know whether any goods were shipped or taken by him from Vesper Place during the time he was engaged in business in Washington? If so, state when and what they were.

A. I know. There was nothing shipped or taken except his shirts and the clothes he wore.

Q. State whether any one went with him from Vesper Place to the train on the occasion of his return to Washington from Shelbina; if so, state who it was.

A. Yes, sir; I went with him.

Q. Who, if any one, lived at Vesper Place during the time Gen. Benjamin was engaged in business in Washington?

A. Mrs. Benjamin.

Q. Who, if an yone, paid you your wages?

A. J. F. Benjamin paid me up to the time he left and Mrs. Benjamin afterwards.

503 Q. Do you know whether Gen. Benjamin bought any wood for Vesper Place prior to going away in 1874? If so, state what amount.

A. Yes, I know; 100 cords.

Q. Do you know what he paid for it? If so, state the price.

A. Yes; $3 per cord.

Cross-examined by B. F. Dobyns:

Q. Do you know in what month in the fall of 1876 Jno. F. Benjamin returned to Washington from Shelbina?

A. I do not know whether it was September or October.

Q. Have you given the exact language used by Gen. Benjamin in these conversations to his wife or the substance of them?

A. I have given the exact language.

Q. How do you know that Gen. Benjamin sent those pictures spoken of?

A. His wife told me and read letters to me that the General had sent her.

his
GILBERT x PICKET.
mark.

Witness to mark :
J. WM. TOWSON.

504 Subscribed and sworn to before me on the day, at the place, and between the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

Not being able to complete the taking of these depositions, on account of the lateness of the hour, the further taking of the same is adjourned till day after to-morrow, Monday morning, to be continued at the place and between the hours mentioned in annexed notice.

J. WM. TOWSON,
Notary Public.

505 MONDAY, *Feb'y 9th*, 1880.

Pursuant to adjournment, as above stated, the taking of these depositions is resumed and continued, as follows, R. P. Giles appearing for G. H. Benjamin and other heirs, and B. F. Dobyns for Guy H. Allen and Geo. C. B. Rowan:

Testimony of Wm. Swart.

WILLIAM SWART, of lawful age, being produced, sworn, and examined, deposes and says:

My name is William Swart; my residence, Shelbina, Mo.; my age, 34 years; my occupation, well-digger.

Q. State whether you were acquainted with Gen. Jno. F. Benjamin in his lifetime.

A. Yes; for twenty-five years before his death.

Q. State whether you saw him on the occasion of his visit to Shelbina in the fall of 1876.

A. I think it was.

506 Q. State whether you had a conversation with him in the year 1876 in reference to making some improvements at Vesper Place; and, if so, state when and where the conversation occurred and what was said by him on that subject.

A. Yes. The last time he was here I met him on the sidewalk between Dickerson and True's store and Kelly's store, in Shelbina. He said he wanted me to dig that well next summer. I told him I was not very busy, and would like to put up the well for him this winter. He said no; that he wanted to be there when the job was done, and said he thought he would get his business wound up in

Washington by spring. Then he wanted to know if I had not got so I could lay rock pretty well. He was going to build him a vault next summer. This is about all the conversation on this subject.

W. M. SWART.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

507 *Testimony of S. G. Butler.*

SEELY G. BUTLER, of lawful age, being produced, sworn, and examined, deposes and says:

My name is Seely G. Butler; my residence, Shelbina, Mo.; my age is 44 years; my occupation, a carpenter.

Q. State if you were acquainted with Gen. Jno. F. Benjamin in his lifetime; and, if so, state how long you had known him.

A. I was. Knew him since July, 1872.

Q. State whether you saw him in the spring or early part of 1876; and, if so, where.

A. I did. I saw him at Vesper Place and also in town a number of times.

Q. State whether you did any work at Vesper Place for him in spring of 1876; if so, state what it was.

A. I did. I hung a number of pictures for him—I think probably in April. They were oil paintings or chromos.

Q. State if any one was present and assisted you in hanging them; if so, state who it was.

508 A. No one but Mr. Benjamin himself.

Q. State whether you had a conversation with Gen. Benjamin in the spring of 1876 in reference to making any improvements at Vesper Place; if so, state when and where the conversation occurred and what was said by him upon the subject.

A. I did. At Vesper Place at same time I hung the pictures. He said he was going to have his house overhauled, and doors repaired, and general repairs on his house.

Q. State if there was anything further said in that conversation.

A. He told me he was going to have a grape-arbor on the south front the following fall. His words were, he would have it built the following fall when he returned.

Q. State whether you saw him in the fall of 1876; if so, state when and where.

A. I did. It was either latter part of September or early part of October. I met him at corner of Dickerson and True's, on the sidewalk.

509 Q. State whether at that time and place you had a conversation with Gen. Benjamin in reference to making improvements at Vesper Place; if so, state what was said by him upon that subject.

A. I did. He said I see you are busy. I told him I was. Then he said I had hoped you would be at leisure, as I wanted to build that grape-arbor. I told him perhaps it would make no difference, as I could prepare the material during the winter and put it up in the spring in time for him to set out his grapes. He said he would let it go in that way until he returned in the spring, and in the meantime I will get some plans made and you can have them to work by.

Q. State whether you had a conversation with him at either of these visits in reference to his returning to Shelbina; if so, state where it took place and what was said by him on that subject.

A. I had. At the corner at Dickerson's and True's at same time the last conversation occurred. After saying that the arrangement about the grape-arbor would suit him he said he would 510
return in the spring to remain and give his personal attention to it.

Q. State whether Gen. Benjamin in that or any other conversation in the year 1876 used the word "home" in talking to you; and, if so, in what connection.

A. I cannot say that he used the werd "home."

Q. State whether you assisted in doing the carpenter work at Vesper Place; and, if so, state when it was built.

A. I did. I commenced work on the place; I think it was the 16th day of July, 1872. I was at work there till the following May.

Q. State whether at any time after Gen. Benjamin's return to Washington in the fall of 1876 you received any draft or plan for improvements at Vesper Place; if so, state when and from whom you received it.

A. I did; along during the following winter. I saw the plan at Vesper Place and the details; Mrs. Benjamin showed them to me. I got them afterwards through the hands of Gil. Picket.

511 Q. State whether you have that plan now.

A. I have the plan purporting to be drawn by Thomas M. Plowman, Washington, D. C.

Q. State what this plan purports to be a draft of.

A. Of a pavilion and arbor.

(Plan here presented and marked by the notary with initials S. G. B, J. Wm. Towson, notary public.)

Cross-examined by B. F. DOBYNS:

Q. Do you know an oil painting from an oil chromo?

A. I believe I do, if I was to examine closely.

Q. Did you examine the pictures for the purpose of finding out if they were oil paintings or oil chromos?

A. I did not.

S. G. BUTLER.

Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.] J. WM. TOWSON,
Notary Public.

512 *Testimony of Mrs. Miller.*

Mrs. VIRGINIA MILLER, of lawful age, being produced, sworn, and examined, deposes and says:

My name is Virginia Miller; my residence is Shelbina, Mo.; my age is 45 years; I have resided at Vesper Place ever since the despatch came announcing the death of Gen. Benjamin; I was acquainted with Mrs. Benjamin, his wife.

Q. State whether you visited Mrs. Benjamin prior to March 9, 1877.

A. I did. I was there a number of times.

Q. State whether Mrs. Benjamin at any time during the year 1877 showed you a letter from Gen. Benjamin; and, if so, state whether you read it, and whether you are acquainted with Gen. Benjamin's handwriting.

A. I am acquainted with the handwriting of Gen. Benjamin. I have seen a number of letters from Gen. Benjamin to his wife.

Q. State whether during Mrs. Benjamin's illness you saw a letter from Gen. Benjamin to his wife; and, if so, state whether you read the same and what was its date.

513 A. Yes. Yes; I read it; do not remember the date.

Q. Do you know whether the letter was written before or after Gen. Benhamen's illness?

A. It was during his illness.

Q. Do you remember the contents of the letter or any portion of it?

A. Yes; I remember a portion of the contents.

Q. Do you remember whether the letter contained any reference to his return *return* to Shelbina?

A. Yes.

Q. State what it contained on the subject.

A. That he was all ready to come home, and, as well as I remember, the doctor said he might die on the way and had better wait a few days. He said it was very sad; they were both so sick and so very far apart.

Q. State whether you read any other letters from Gen. Benjamin to his wife written during his stay in Washington?

514 A. Yes; a number of them.

Q. State whether you read any letters written within a period of two or three months prior to his death.

A. Yes, sir.

Q. Do you remember the contents or any portion of the contents of any letter from Gen. Benjamin to his wife written two or three months prior to his death?

A. Yes.

Q. Do you remember whether the letter contained any reference to his returning home?

(Objected to by B. F. Dobyns as leading.)

A. Yes.

Q. State what it contained on that subject.

A. I cannot say whether it was 29 or $39,000 he said he had collected to come home; that he thought they were getting old and would settle down. My recollection is that that was the meaning of it.

Q. When did you see the two letters above mentioned?

515 A. I cannot remember when. They were all burned except what Mr. Hasbrouck took.

Q. In whose possession were these letters when you read them?

A. In mine.

Q. What did you do with them after reading?

A. I laid them in the pile with her other letters.

Q. Do you know D. B. Hasbrouck?

A. I do.

Q. State whether he had access to those letters.

A. Yes, sir.

Q. Do you know whether he took possession of any letters from Gen. Benjamin to his wife; if so, how many?

A. Yes, sir; I cannot tell how many.

Q. Do you know whether the letters taken by him were among the last Mrs. Benjamin received?

A. Yes; they are.

516 Q. State, if you know, what he did with them.

A. I presume he took them home with *them*.

Q. State whether you have seen the two letters above spoken of since Mr. Hasbrouck left Shelbina the first time in 1877.

A. I have not.

Q. State whether you had a conversation with Gen. Benjamin in the fall of 1876 in which he referred to his coming home; and, if so, state when and where the conversation occurred and what was said by him on that subject.

(Objected to by B. F. Dobyns as leading.)

A. Yes; it was at our own house. He and his wife were together. I asked him if he had come home to stay. He said not that time; that he thought the next time he came home would be for good.

Cross-examined by B. F. DOBYNS:

Q. Did you ever see Jno. F. Benjamin write?

A. I think I have.

517 Q. Did you ever examine any of the writing which you saw him write?

A. No, sir; do not think I ever did.

Q. Then you are not acquainted with his handwriting from having seen him write, are you?

A. No, sir.

Q. Your acquaintance with the handwriting of Gen. Benjamin, then, is only from having seen and read letters with his name to them, is it not?

A. Yes, sir.

Q. Have you stated the exact language or the substance of the conversations which you had with Gen. Benjamin in the fall of 1876?

A. It is the substance, as well as I can remember.

Q. Have you stated the exact language, or the substance of the two letters about which you have testified?

A. I have stated the substance—that is, the meaning—of the letters.

518 Q. How do you know that the letters taken away by D. B. Hasbrouck were among the last that Mrs. Benjamin received from her husband?

A. Because she kept them on her bed while she was sick, and they were laid away in a pile together.

Q. Did you deliver those letters to Mr. Hasbrouck yourself?

A. At her death they were put in a drawer and locked, and I do not remember whether I got them or whether I gave him the key and he got them himself.

Q. Can you give the date of either one of the letters which you read?

A. I cannot.

Q. Can you give the year in which either one of them was written, as it appeared upon the letter?

A. I do not remember. I know one letter that I referred to was written during his illness.

Redirect:

Q. State whether you saw Gen. Benjamin write some poetry on one occasion; and, if so, when, and whether you have seen it since.

519 A. I did; don't remember just the year; I have seen it since we have been out there.

Q. Did you ever read a letter your husband, Mr. Miller, received from Gen. Benjamin three or four months prior to his death?

A. I did.

(The exhibits attached to deposition of C. M. King were here shown to witness.)

Q. State whether the letters marked Exhibits C. M. K., are in the same handwriting as the two letters above spoken of as having been read by you from Gen. Benjamin to his wife?

A. I think they are.

Recross-examined by B. F. Dobyns:

Q. How many years since you saw him write that poetry?

A. It was before he went into business in Washington.

VIRGINIA MILLER.

520 Subscribed and sworn to before me on the day, at the place, and within the hours last aforesaid.

[SEAL.]

J. WM. TOWSON,
Notary Public.

521 *Costs & Expenses.*

Notary fees:		
Writing 11,300 words at 15c. per 100		$16 95
Swearing 11 witnesses		55
Issuing 1 subpœna for S. G. Butler		50
13 jurats		6 50
Postage on these depositions		75
		$25 25
Constable's fees:		
John Carnahan, serving 1 subpœna	50	
Witness fees:		
J. H. Fox & J. H. Gough, 1 day each	$2 00	
J. W. Miller, W. A. Reid, J. S. Chandler, 1 day each	3 00	
A. R. Graham, E. M. King, G. Picket, 1 day each	3 00	
Wm. Swart, S. G. Butler, Mrs. V. Miller, 1 day each	3 00	
	—	11 50
		$36 75

Rec'd payment in full from King & Giles, att'y- for G. H. Benjamin.

Feb'y 9th, 1880.

J. WM. TOWSON,
Notary Public.

522 STATE OF MISSOURI, } *ss:*
County of Shelby; }

I, J. Wm. Towson, a notary public in and for said county of Shelby, do hereby certify that Jos. H. Fox, J. H. Gough, Jno. W. Miller, Wm. A. Reid, Jno. S. Chandler, Alex. R. Graham, C. M. King, Gilbert Picket, Wm. Swart, S. G. Butler, and Mrs. Virginia Miller, the above-named deponents, whose residence is in Shelby county, in the State of Missouri, were by me first sworn to testify the truth, the whole truth, and nothing but the truth of their knowledge touching the matter in controversy in the cause now pending in the supreme court of the District of Columbia, holding a special term for probate business, in the matter of the estate of John F. Benjamin on the question of the domicil of the testator, Jno. F. Benjamin, on behalf of George H. Benjamin and other heirs of said John F. Benjamin, deceased, that the foregoing depositions were all reduced to writing by me and severally subscribed and sworn to before me, as follows: By Jos. H. Fox and James H. Gough on the 5th day of February, 1880; by John W. Miller, Wm. A.
523 Reid, John S. Chandler, and Alexander R. Graham on the
6th day of February, 1880; by C. M. King and Gilbert Picket on the 7th day of February, 1880, and by Wm. Swart, S. G. Butler, and Mrs. Virginia Miller on the 9th day of February, 1880, the same being continued from day to day for want of time to complete the taking of said depositions on the said 5th day of February, 1880,

between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of each of said days at the law office of King and Giles, in the city of Shelbina, in the county of Shelby and State of Missouri, in conformity in all respects with the annexed stipulations; and I further certify that I am authorized by the laws of Missouri to administer oaths and to take and certify depositions; and I further certify that the costs herein taxed and attached are the fees and costs of officers and witnesses as allowed by the laws of Missouri; and I further certify that I was qualified as said notary public May 20th, 1875, and that my term will expire May 13th, 1881.

In witness whereof I have hereto set my hand and seal this 9th day of February, 1880.

[SEAL.] J. WM. TOWSON,
Notary Public.

524 *Motion of Geo. Truesdell. Issues to be Sent to Circuit Court.*

In the Supreme Court of the District of Columbia. Special Term for Orphans' Court Business.

In the Matter of the Estate of John F. Benjamin.

George Truesdell, executor of said estate for the said District of Columbia, comes now and requires that the court shall direct issues to be made up and sent to the circuit court, to be tried by jury, as to the domicil of said John F. Benjamin at the time of his death, and as to the validity of his said will, which questions are in dispute by parties claiming an interest in the said estate now represented by this executor.

GEO. TRUESDELL.

EDWARDS & BARNARD,
Solicitors for said Executor.

525 *Order to Pay Expenses of Taking Depositions.*

In the Supreme Court of the District of Columbia in Special Term for Probate Business.

In the Matter of the Estate of John F. Benjamin.

On motion of A. S. Worthington, solicitor for Guy H. Allen, it is, this 30th day of January, 1880, ordered that George Truesdell, executor, be, and he hereby is, directed to pay from that portion of the fund in his hands as executor of John F. Benjamin, bequeathed to said Guy H. Allen, the necessary and proper expenses attending the taking of depositions in her behalf under the order of this court made herein on the 24th day of January, 1880, the question as to the liability of funds otherwise bequeathed to contribute to this expense to be considered hereafter.

CH. P. JAMES, *Justice.*

Consent.

EDWARDS & BARNARD,
Solicitors for Executor.

526 *Petition of G. H. Benjamin et al.*

STATE OF MISSOURI, } *ss:*
County of Shelby, }

In the Circuit Court. To the April Term, 1878.

GEORGE H. BENJAMIN, HENRY H. BENJAMIN, LOUISA WOOD and Luke C. Wood, her Husband, and Thurza Parks and Newton Parks, her Husband, Plaintiffs,

vs.

JOSHUA M. ENNIS, GEORGE TRUESDELL, OTIS BIGELOW GUY H. ALLEN, and James M. Allen, her Husband; Minnie Hammond and Eugene Hammond, her Husband; George C. Rowan, Charles M. King, Daniel B. Hasbrouck, Charles W. Hasbrouck, Catharine Hasbrouck, Emmeline Paddock and John Paddock, her Husband; John W. Miller, Virginia Miller, Sarah Carley and Felix J. Carley, her Husband; Gilbert Pickett, William A. Poillon, John D. S. Dryden, Elizabeth Hasbrouck, Mary F. Hasbrouck, Sarah M. Brown, Sarah Hasbrouck, Louisa Hasbrouck, Julia Hasbrouck, J. D. Smith, and James Hasbrouck, Defendants.

527 Plaintiffs state that on the eighth day of *of* March, 1877, John F. Benjamin, then a resident of the town of Shelbina, in the county of Shelby and State of Missouri, while temporarily attending to business at the city of Washington, in the District of Columbia, died, leaving him surviving as his heirs and legal representatives his wife, Diana Benjamin; his brothers, George H. Benjamin and Henry H. Benjamin; his sister, Louisa Wood, formerly Louisa Benjamin, and his niece, Thurza Parks, formerly Thurza Barnes, daughter and only surviving heir of Thurza Barnes, formerly Thurza Benjamin, a sister of said deceased.

That at the time of his death aforesaid the said John F. Benjamin was seized in fee and possessed of a large amount of real estate in the city of Washington, in the District of Columbia, and also in the State of Missouri, including, among other, a valuable homestead with the mansion-house thereon situated, lying, and being situate in the county of Shelby, in the State of Missouri; that at the time of his death he was also the owner and possessed of a large 528 amount of personal property, stocks in bank, county and and other negotiable bonds, choses in action, and moneys on hand and in bank, the amounts and value of which plaintiffs are unable to state.

Plaintiffs further state that at the time of the death of the said John F. Benjamin he left his said wife, Diana Benjamin, residing in and occupying the mansion-house aforesaid, and that at his death aforesaid the said John F. Benjamin left no child or children or lineal descendants him surviving, and that the plaintiffs and Diana Benjamin, his said wife, were and are his only surviving heirs and legal representatives.

Plaintiffs further state that heretofore, to wit, on the 7th day of May, 1877, and within five years from the date of the filing of this petition a certain instrument in writing was admitted to probate by the probate court of the county of Shelby, in the State of Missouri, at the April term, 1877, thereof as and for the last will and testament of the said John F. Benjamin, deceased (a certified copy of which said instrument of writing and the probate thereof is herewith filed and attached hereto), and letters testamentary 529 thereon were, on the 9th day of May, 1877, by the said probate court granted to Joshua M. Ennis, an executor named in the said supposed will; that the said Joshua M. Ennis accepted the executorship thereunder and qualified as such executor, and has taken possession of the property of the deceased, or so much thereof as was within the jurisdiction of the said court, and is now proceeding to administer thereon. Whereofore the said Joshua M. Ennis is made a party herein and summoned to answer in this action.

That Guy H. Allen, wife of James M. Allen; Minnie Hammond, wife of Eugene Hammond; George C. Rowan, Chas. M. King, and Diana Benjamin are and were, by the terms of said supposed will, made legatees by the following bequests in said supposed will named, to wit: To Guy H. Allen all his interest in the partneship of Bigelow and Benjamin, and all debts which were then owing to him by persons in the District of Columbia, and all the real estate then owned by him, the said John F. Benjamin, in the District of Columbia, and of the aggregate value of one hundred thousand dollars, and 530 in the event that the said Guy H. Allen did not survive him, the said John F. Benjamin, many days, or not at all, then to the said Minnie Hammond all the part of the said Guy H. Allen as to her given by the said supposed will; to George C. Rowan, one hundred dollars; to Charles M. King, all that portion of his law library and furniture then in use by the said Charles M. King, and one gold-headed cane; to Diana Benjamin, all his property of every description owned and possessed by him, the said John F. Benjamin, in the State of Missouri; also twelve thousand dollars in District of Columbia six per cent. bonds, a deed of trust loan for four thousand dollars executed by John G. Waters, and a note of two thousand dollars against William Ridge, said legacy estimated to be of the value of twenty-five thousand dollars.

Plaintiffs further state that in and by the terms of the said supposed will the defendant, George Truesdell, was appointed to wind up the business of the said John F. Benjamin in the District 531 of Columbia so far as would not interfere with the rights of Otis Bigelow, the surviving partner of the said John F. Benjamin; that the said George Truesdell procured a certified copy of the said supposed will and of the probate thereof from the probate court of Shelby county, Missouri, aforesaid, where the same had been admitted to probate, and on the — day of ——, 1877, presented the same to the supreme court of the District of Columbia, in the United States, the same having probate jurisdiction in said District; and thereupon such proceedings were had in such court that letters testamentary were issued thereon to the said George Truesdell, and the said court appointed the said George Truesdell executor of the said supposed will as probated in said court, and the said George

Truesdell thereupon gave bond and entered upon, and is now performing, the duties of executor thereunder. Wherefore the said George Truesdell is made a party defendant in this action.

Plaintiffs further state that at the time of the death of the said John F. Benjamin aforesaid he was engaged in a banking 532 business in the city of Washington, in partnership with one Otis Bigelow, under the firm name and style of Bigelow and Benjamin, in which business the said John F. Benjamin had a large amount of capital invested, to wit, the sum of one hundred thousand dollars; that since his death aforesaid the said Otis Bigelow has continued, and is now continuing, the said banking business without administering the said partnership, and without giving bond to any court having jurisdiction thereof, for the settlement and adjustment of said partnership; that said Bigelow has charge of said funds, and that the said partnership funds are disposed of by the terms of said supposed will. Wherefore the said Otis Bigelow is made a party defendant herein.

Plaintiffs further state that afterward, to wit, on the third day of June, 1877, the said Diana Benjamin, one of the legatees in the supposed will named, and wife of the said John F. Benjamin, deceased, died at the county of Shelby, in the State of Missouri; that prior to her death, and on the 19th day of May, 1877, she 533 made and published her last will and testament; that the same was, on the 5th day of June, 1877, admitted to probate by the probate court of Shelby county, in the State of Missouri, at the April term thereof, and letters testamentary thereon were, on the 6th day of June, 1877, by the said probate court, granted to John W. Miller, an executor named in said will; that said John W. Miller accepted the executorship thereunder and qualified as such; that he has taken possession of the estate of the said Diana Benjamin, deceased, and, among other, *of* the property bequeathed and devised to the said Diana Benjamin in and by the terms of the said supposed will named as probated as and for the last will and testament of the said John F. Benjamin, deceased. Wherefore the said John W. Miller is made a party defendant herein.

That in and by the terms of the said will, so by her made, Virginia Miller, Sarah Carley, Gilbert Pickett, William A. Poillon, John D. S. Dryden, Elizabeth Hasbrouck, Mary F. Hasbrouck, Sarah M. Brown, Catharine Hasbrouck, Julia Hasbrouck, Louisa Hasbrouck, Charles W. Hasbrouck, Sarah Hasbrouck, Daniel B. Has- 534 brouck, Emmeline Paddock, James H. Hasbrouck, and James D. Smith were made legatees; that the legacies in the said will to them bequeathed were of the property to the said Diana Benjamin bequeathed by the the aforesaid supposed will of John F. Benjamin, deceased. Wherefore the said legatees are made parties defendant herein.

Plaintiffs further state that at the time of her death the said Diana Benjamin left her surviving her brothers and sisters and only heirs, Daniel B. Hasbrouck, Charles W. Hasbrouck, Catharine Hasbrouck, and Emmeline Paddock, formerly Emmeline Hasbrouck. Wherefore they are also made parties defendant herein.

And the said plaintiffs further state that at the time the supposed will purports to have been subscribed by the said John F. Benjamin in his lifetime, and also at the time the same was published and declared as and for his last will and testament, the said John F. Benjamin was not of sound mind and memory; but, on the contrary thereof, was of unsound mind and wholly incapable of making a testamentary disposition of his property and effects. 535

Plaintiffs further aver, and charge the fact to be, that Guy H. Allen, who is named in the said will as the principal legatee, at the time of the execution of said pretended will, and at the time the same purports to have been published and declared as and for the last will and testament of the said John F. Benjamin, and for a long time prior thereto, had and possessed an undue influence over the said John F. Benjamin, and that she did unduly and fraudulently exercise such undue influence over him, the said John F. Benjamin, and did thereby fraudulently procure and induce him to make and publish the said pretended will, and did then and thereby unduly influence him in the disposal therein of his property and effects.

Plaintiffs further aver that the said supposed will and the execution and the publication thereof was procured by fraud and undue influence, had and exercised at the time of the pretended execution and publication thereof, and prior thereto, by the said Guy H. Allen and Minnie Hammond, the sister of the said Guy H. 536 Allen, who is a contingent legatee in the supposed will, and other parties to these plaintiffs unknown; upon the said John F. Benjamin, whereby he, the said John F. Benjamin, was fraudulently induced to make and publish the said pretended will as and for his last will and testament, and that the same purports to have been made and published on the 7th day of March, 1877, and that the said John F. Benjamin died on the morning of the 8th day of March, 1877, and less than twenty-four hours after the same purports to have been made and published

Wherefore the said plaintiffs pray the court that the probate of the said supposed will be revoked and set aside, and that the said instrument be adjudged not to be the last will and testament of the said John F. Benjamin, deceased, and that the same be declared inoperative and for naught held.

B. G. BARROW AND
KING & GILES,
Attorneys for Plaintiffs.

537 STATE OF MISSOURI,
County of Shelby, } *ss:*

I, John J. Bragg, clerk of the circuit court in and for said county, hereby certify that the above is a true copy of the original petition in the cause therein named as the same appears on file in my office.

Witness my hand as clerk and seal of said court.

Done in office, in Shelbyville, this 19th day of Jan'y, 1880.

[SEAL.] JOHN J. BRAGG, *Clerk.*

538 *Answer of George Truesdell.*

STATE OF MISSOURI, } ss:
County of Shelby, }

In the Circuit Court. April Term, 1878.

GEORGE H. BENJAMIN *et al.*

vs.

JOSHUA M. ENNIS, GEORGE TRUESDELL, *et al.*

The answer of the defendant, George Truesdell.

For answer to the bill of complaint exhibited in this cause, reserving all benefit of exception to the insufficiencies thereof, the said defendant says:

1. He admits that John F. Benjamin died in the city of Washington and District of Columbia on the 8th day of March, 1877, as alleged in the first paragraph of the bill, but he does not know who are the heirs-at-law of the said Benjamin.

2. That he believes the said Benjamin did own property at the date of his death, as stated in the second paragraph.

539 3. That he has no personal knowledge of the facts stated in the third paragraph, but presumes that it is true that the said Benjamin had no children, and that his wife, Diana, was occupying the mansion-house in Missouri at the time of said Benjamin's death.

4. That he presumes the facts stated in the fourth paragraph are true.

5. That he believes the legacies named in the fifth paragraph of the bill are the same as those mentioned in the will described in the fourth paragraph. He has no means of estimating the value of bequests and devises to the said Diana Benjamin, and cannot give the value thereof, and he says the value of the property devised to Guy H. Allen is not more than $40,000.

6. He admits that he was appointed executor of the will of said John F. Benjamin in the District of Columbia, and says that a duly certified copy of the said will and probate was filed in the office of the register of wills on the 22d day of May, 1877, and duly admitted to probate and recorded in the supreme court of the District 540 of Columbia, holding a special term for probate business, on the 5th day of June, 1877, and that he duly qualified as such executor and received letters testimentary from the said court on the 5th day of June, 1877, which letters are still in force, and under which he has been acting since the date thereof in the due administration of the said estate, and is now acting.

7. He admits that the said John F. Benjamin was engaged in business in Washington city as partner of Otis Bigelow, as stated in the 7th paragraph; but he cannot say how much capital said Benjamin had invested in said business, except that the books of said Benjamin show that his interest in said business was between $34,000 and $35,000. He admits that the said Bigelow, as surviving partner,

has been continuing business in the same line at the same place, but he says that a suit has been brought by this defendant, as executor as aforesaid, against the said Bigelow in the supreme court of the District of Columbia, in equity, for the purpose of requiring 541 the said Bigelow to settle the partnership matters of the said Bigelow and Benjamin, and to pay over to this defendant the share of the said Benjamin in the said partnership, which suit is still depending and undetermined.

8, 9, 10. That he has no knowledge of the various averments contained in the 8th, 9th, and 10th paragraphs of the bill relating to the death, will, legatees, and devisees, and heirs-at-law of the said Diana Benjamin.

11. That he denies that the said John F. Benjamin was of unsound mind and memory when he made his said will, as alleged in the 11th paragraph, and he says, on the contrary, his, the said Benjamin's, mind and memory were sound and clear at the said time, and that he was fully capable of making a valid will or any other contract requiring the full use of his mental powers.

12. He denies that the defendant, Guy H. Allen, exercised any undue influence over the said John F. Benjamin at the time 542 of the making of his said will, and he denies that she, the said Guy H. Allen, fraudulently procured and induced him, the said Benjamin, to make and publish this same, as claimed and stated in the 12th paragraph. On the contrary, he says that he knows of his own knowledge that at the time of the execution of the said will the said Guy H. Allen was not present; that she was lying in a different room, herself very sick, and at that time she was not expected to survive the said Benjamin.

13. That he denies that any fraud or undue influence was brought to bear upon the said Benjamin, to induce him to execute the said will, by the defendants, Guy H. Allen and Minnie Hammond, or any other person, as alleged and claimed in the 13th paragraph. On the contrary, he says that the said will was freely and voluntarily made and executed by the said Benjamin, in his right mind and in his full possession and exercise of his senses; that he fully understood the force of language used therein, and that he understandingly and wholly, without bias, influence, or request 543 from any one, dictated the said will to this defendant, who wrote it as dictated in the presence of said testator, and who witnessed the signing thereof by the said Benjamin. Wherefore he claims that the complainants have no authority or right to have the same revoked or set aside by the decree of this honorable court, and he asks that their said bill may be dismissed with costs.

GEO. TRUESDELL.

District of Columbia, *ss:*

George Truesdell swears that he has read the above answer by him subscribed and knows the contents thereof, and that the facts therein stated of his own knowledge are true, and those therein stated on information and belief he believes to be true.

GEO. TRUESDELL.

Subscribed and sworn to before me this 14th day of March, 1878.

MILTON C. BARNARD,
Notary Public.

CLERK'S OFFICE OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA.

DISTRICT OF COLUMBIA, *ss:*

544 I, R. J. Meigs, clerk of the said court, do hereby certify that Milton C. Barnard, Esq., whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgment, a notary public in and for the said District, dwelling therein, commissioned, sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of the said Milton C. Barnard, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and the said instrument is executed and acknowledged according to the laws of this District.

In testimony whereof I have hereunto set my name and affixed the seal of said court this 14th day of March, A. D. 1878.

R. J. MEIGS, *Clerk*,
[SEAL.] By M. A. CLANCY, *Ass't Cl'k.*

STATE OF MISSOURI, } *ss:*
County of Shelby, }

545 I, John J. Bragg, clerk of the circuit court within and for the county of Shelby aforesaid, hereby certify that the above and foregoing is a true, correct, and complete copy of the answer of George Truesdell, Esq., in the cause therein named as the same appears on file among the papers in said cause in my office; and I further certify that said answer was filed in said cause March 26, 1878.

In testimony whereof I have hereto set my hand and affixed the seal of said court at my office, in Shelbyville, Mo., this Jan'y 19th, 1880.

[SEAL.] JOHN J. BRAGG, *Clerk.*

546 *Answer of Guy H. Allen.*

STATE OF MISSOURI, } *ss:*
County of Shelby, }

In the Circuit Court. To the April Term, 1878.

GEORGE H. BENJAMIN *et als.*, Plaintiffs,
vs.
JOSHUA M. ENNIS *et als.*, Defendants.

The separate answer of Mrs. Guy H. Allen to the petition of George H. Benjamin *et al.*, plaintiffs.

This defendant, Mrs. Guy H. Allen, now and at all times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petition of said plaintiffs contained, for answer thereunto, or unto so much and to such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, *this defendant*, answering, saith:

547 She admits the averments in said petition that John F. Benjamin died in the city of Washington, in the District of Columbia, on the eighth day of March, in the year of our Lord eighteen hundred and seventy-seven, but denies that the said John F. Benjamin was merely temporarily attending to business at the said city of Washington, but, on the contrary, avers the truth to be that he, the said John F. Benjamin, was regularly engaged in business in said District, and had entered into a copartnership with one Otis Bigelow to carry on business in the said city of Washington for an agreed period of time, and which time had not elapsed at the time of the death of said John F. Benjamin.

This defendant admits that the said plaintiffs have correctly set forth the names of the heirs and legal representatives of the said John F. Benjamin had he, the said John F. Benjamin, died intestate.

This defendant admits that the said John F. Benjamin was, at the time of his death, seized in fee of considerable real estate in said city of Washington, but is not advised definitely as to the extent or value of his real property in the State of Missouri.

548 This defendant further admits that the said John F. Benjamin was the owner and possessed of a large amount of personal property, stocks in bank, county, and other negotiable bonds, choses in action, and money on hand and in bank, as the said plaintiffs have averred, but she is unable to state the amounts and value thereof with accuracy, but claims leave to offer proof thereof hereafter if necessary.

This defendant further admits that the said John F. Benjamin at the time of his death left his wife, Diana Benjamin, residing in and occupying the mansion-house, as in said petition of said plaintiffs averred.

This defendant further admits that the said John F. Benjamin left no child or children or lineal descendants him surviving, and that the plaintiffs aforesaid and said Diana Benjamin would have been the only surviving heirs and legal representatives had the said John F. Benjamin died intestate. This defendant admits that on
or about the 7th day of May, 1877, a certain instrument in
549 writing was admitted to probate by the probate court of the
county of Shelby, in said State of Missouri, at the April term thereof, which instrument this defendant is informed and believes and charges was and is the last will and testament of the said John F. Benjamin, deceased. She admits on information and belief the issuance, as averred in said petition, of letters testamentary to the said Joshua M. Ennis, as executor named in said last will and testament; also that the said Joshua M. Ennis has accepted and qualified and acted as such executor in the State of Missouri as in the

manner averred in said petition, and also that he was at the time of filing of said petition and still is proceeding to administer upon so much of said estate as lies within said State of Missouri.

The defendant admits, as in said petition it is averred, that this defendant, wife of said James M. Allen; Minnie Hammond, wife of Eugene Hammond; George C. Rowan, Chas. M. King, and Diana Benjamin are and were by the terms of said last will and testament made legatees by the bequests and legacies to the extent and
550 of the nature in said petition averred; but this defendant denies that the bequests or legacies mentioned in said will as made to her were at the time of the making of said last will and testament, or has any time since been, worth one hundred thousand dollars, but this defendants is advised and believes and charges that her share of said estate is not worth more than forty-five thousand dollars. She admits the averments as to George Truesdell, the person named in said last will and testament, and his actions in respect to said last will and testament; also the issuance of said letters testamentary by the supreme court of the District of Columbia to the said Truesdell, and that the said Truesdell gave bond and entered upon his duties as executor thereunder.

This defendant also admits the averments in said petition that the said John F. Benjamin was engaged in the banking business with one Otis Bigelow, under the firm name and style of Bigelow and Benjamin; that said John F. Benjamin had a large amount of capital invested, but denies that the interest of the said John F. Benjamin in the said copartnership business amounted to
551 the sum of one hundred thousand dollars, but on the contrary is advised and believes and avers that said interest did not exceed the sum of $34,500.00. This defendant admits that the said Otis Bigelow has continued to carry on said business since the death of the said John F. Benjamin and without giving any bond to any court whatever for any purposes whatever; but this defendant is informed and believes and avers that the said Otis Bigelow, since the the death of the said John F. Benjamin, has conducted said business solely for the purpose of properly and lawfully administering the same as the sole surviving partner of said firm and of duly settling it up as soon as may be. This defendant admits that the said Otis Bigelow has full and exclusive charge of said partnership funds disposed of by said will, but is informed and believes and avers that such charge is rightfully and exclusively his by virtue of the laws in force in said District of Columbia.

This defendant admits the death of the said Diana Benjamin, as in said petition of said plaintiffs averred. She likewise ad-
552 mits the averments touching the making and publishing and probating of the last will of the said Diana Benjamin, also the issuing of letters testamentary thereon, the acceptance by the said John W. Miller of the executorship, and his qualification as such. This defendant does not deny but that the said John W. Miller has, as such executor, taken possession of certain property embraced in the last will of the said John F. Benjamin, deceased.

This defendant does not know the contents of the said last will of the said Diana Benjamin, and has no information in regard to the same, excepting from the said petition of plaintiffs, but asks, if it be material, due proof of the contents thereof may be required to be made.

This defendant does not know save from the said petition who were left as heirs by the said Diana Benjamin, but believes the averments in respect thereto to be true.

This defendant, in answer to the averments in said petition that at
the time the said supposed will purports to have been subscribed by
the said John F. Benjamin in his lifetime, and also at the
553 time the same was published and declared as and for his last
will and testament, the said John F. Benjamin was not of
sound mind and memory, but, on the contrary thereof, was of unsound mind and wholly incapable of making a testamentary disposition of his property and effects says that she denies all and each of the foregoing averments in this paragraph above mentioned, and, on the contrary, avers the truth to be that at the time the said John F. Benjamin subscribed the said last will and testament, and also at the time the same was published and declared as aforesaid, he was of sound mind and memory and wholly and fully capable of making a testamentary disposition of his property and effects; and, further, that at said times last above mentioned, to wit, at the time of subscribing said will and at the time of publishing and declaring said will as aforesaid the said John F. Benjamin was of sound and disposing mind and capable of executing a valid deed or contract.

This defendant denies wholly and utterly the averments in said
petition that at the time of the execution of said will and at —
554 the same was published and declared as and for the last will
and testament of the said John F. Benjamin, and for a long
time prior thereto, this defendant had and possessed an undue influence over the said John F. Benjamin, and avers that all and each are wholly false and unfounded, and she likewise wholly and utterly denies the averments that she, meaning this defendant, did unduly and fraudulently exercise such undue influence over him, the said John F. Benjamin, and did thereby fraudulently procure and induce him to make and publish the said will, and did thereby unduly influence him, meaning the said John H. Benjamin, in the disposal therein of his property and effects, and this defendant avers that all and each of said averments are likewise wholly false and unfounded.

In further answer to said petition this defendant says she wholly
and utterly denies the averments in said petition that the said will and
the execution and publication thereof were procured by fraud and
undue influence had and exercised at the time of the execu-
555 tion and publication thereof and prior thereto by this de-
fendant and Minnie Hammond, the sister of this defendant, and
other parties to the plaintiffs unknown, upon the said John F. Benjamin, whereby the said John F. Benjamin was fraudulently induced to make and publish the said will as and for his last will and testament, and this defendant avers that all and each of said averments of said plaintiffs are wholly false and unfounded, and this defendant likewise avers that neither separately or in connection or combina-

tion with the said Minnie Hammond, -or in connection or combination with any other person or persons whomsoever, did she at the time of the execution of said will or at the time the same was published and declared, or at any other time whatsoever, procure or attempt to procure by fraud, undue influence, or any unlawful or improper means whatsoever, the execution of said will or any portion thereof, or any other will by the said John F. Benjamin.

That this defendant was seriously and dangerously ill at the time said will was drawn, executed, published, and declared and for several days prior thereto, and confined to her room and did 556 not and could not see or converse with the said John F. Benjamin.

That this defendant did not seek to influence him by any undue or improper influences touching the making of this will in controversy herein, or any other will, at any time whatsoever during the lifetime of said John F. Benjamin, and that the said Minnie Hammond was not in the said District of Columbia at the time said will was made and published, nor for a long time prior thereto, and exercised no influence whatever over said John F. Benjamin touching said will; that the said John F. Benjamin, many years before his death, and in this defendant's early childhood, had adopted this defendant as his daughter, he being childless, and at all times thereafter treated and spoke of this defendant as such so long as he lived, and suffered and encouraged this defendant to call him father; that this affection, modest and pure, that existed between them was the only influence that operated on the mind of the said John F. Benjamin in making said will, so far as this defendant is benefitted therby, to the knowledge or belief of defendant.

557 This defendant admits that said will was made and published on the 7th day of March, 1877, and that the said John F. Benjamin died upon the next day thereafter, and that the estimate of time made by plaintiffs intervening is substantially correct; but that the mind of the said John F. Benjamin at the time of making and publishing said will was not involved at all in disease or effected thereby, but was as strong, clear, and unclouded as when the said John F. Benjamin was in sound physical health; that the said will was written in the presence of said John F. Benjamin and at his dictation, and that it was read by paragraphs to him, the said John F. Benjamin, as each was completed, and again as a whole when completed, and expresses not only the intent of the said John F. Benjamin, but the very words used by him. Whereupon this defendant prays the court to enter a judgment that the paper writing admitted to probate by the probate court of the county of Shelby, in the State of Missouri, as the will of John F. Benjamin, deceased, was the last will and testament of said John F. Benjamin.

GUY H. ALLEN.

558 District of Columbia, *ss:*

I do solemnly swear that I have heard read the foregoing answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and the facts therein stated upon information and belief I believe to be true.

GUY H. ALLEN.

Sworn before me and signed in my presence this 26th day of March, 1878.

R. J. MEIGS, *Clerk.*
[SEAL.] By M. A. CLANCY,
Ass't Clerk.

STATE OF MISSOURI, } ss:
County of Shelby, }

I, John J. Bragg, clerk of the circuit court within and for the county of Shelby aforesaid, hereby certify that the above and foregoing is a true, perfect, and complete copy of the answer of Guy H. Allen, as the same appears on file among the papers in the cause therein named, and I further certify that the said answer was filed in said cause March 30th, 1878.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at my office in Shelbyville, Mo., this 19th day of Jan'y, 1880.

[SEAL.] JOHN J. BRAGG, *Clerk.*

559 *Order Fixing Day for Hearing Argument as to Domicil.*

In the Supreme Court of the District of Columbia. Special Term. Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

On hearing the application of parties to fix day for hearing of this cause upon the question of domicil on the testimony now taken and filed herein.—

It is, this 18th day of February, 1880, ordered that the matter be heard on Saturday the 21 day of February, 1880.

CH. P. JAMES, *Justice.*

560 *Decree as to Domicil.*

In the Supreme Court of the District of Columbia, sitting in Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

This cause came on to be heard upon the petition of Guy H. Allen and George C. B. Rowan, filed in this court on the 9th day of January, 1880, and upon the answers thereto filed by George H. Benjamin, George Truesdell, executor of decedent, and John W. Miller, executor of Diana Benjamin, and upon the depositions on behalf of said Guy H. Allen, and on behalf of George H. Benjamin, Henry H. Benjamin, Louisa Wood, and Thurza Parks, heirs of the decedent, taken under the order of the court made herein on the 23d day of January, and was argued by A. S. Worthington, Esq., counsel for said petitioners, and by R. R. Lowe, Esq., counsel for said heirs; and

said counsel for said heirs read in evidence to the court, from Liber A W, No. 16, folio 237, of the records of this court, the will of the said John F. Benjamin as it there stands admitted to probate, and stated to the court that he relied upon the declarations of the
561 testator contained in said will as evidence upon the question of his domicil; and upon consideration of all the foregoing it is, this 28th day of February, 1880, ordered, adjudged, and decreed that the domicil of said John F. Benjamin, on the 7th day of March, 1877, when said will was made, and on the 8th day of March, 1877, when he died, was the city of Washington, in the District of Columbia; that this court has original jurisdiction in the matter of his estate.

CHAS. P. JAMES, *Justice.*

562 *Agreement of Legatees as to Expenses, &c.*

In the Supreme Court of the District of Columbia, in Special Term for Probate Business.

In the Matter of the Estate of John F. Benjamin.

It is agreed that there shall be paid out of the fund bequeathed to Guy H. Allen by the above-named testator all the general expenses incurred by this executor, George Truesdell, in this case; that there shall be paid to said Guy H. Allen or her attorney by said executor, from the fund bequeathed by said testator to his wife Diana Benjamin, the sum of thirty-five hundred dollars in full of all claims against her estate on account of such general expenses.

A. S. WORTHINGTON,
Att'y for Guy H. Allen.
JOHN W. MILLER,
Executor of Will of Diana Benjamin,
By D. B. HASBROUCK,
Attorney-in-Fact.

563 *Decree App'v'ng Final Acc't, &c.*

In the Supreme Court of the District of Columbia. Special Term. Probate Business.

In the Matter of the Estate of John F. Benjamin.

It appearing to the court that it has been decreed herein that the domicil of the said testator, John F. Benjamin, at the date of his death was in the District of Columbia, and that this court has original jurisdiction of the settlement of his said estate situate within this District, and that his will has been duly proven and admitted to probate and record- herein, and that notice of final settlement and distribution of the personal estate has been duly published and proved herein as provided by law, and that George Truesdell, executor for the District, has filed and stated his second and final account herein, which has been examined and verified by the register of wills, and the account stated for distribution in accordance with the provisions of the will and agreement of legatees, and no

objection or exception being made or taken thereto by any
564 of the parties claiming under the said will, they all being
here represented, it is, this 5th day of March, 1880, ordered, adjudged, and decreed that the said final account of the said executor be, and the same is hereby, approved and confirmed, and that the said executor distribute, pay over, and deliver the said estate in his possession as provided in the said account.

A. B. HAGNER,
Asso. Justice.

565 *Motion for Nunc Pro Tunc Entry.*

In the Supreme Court of the District of Columbia.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

To the honorable judge, sitting in probate business:

George H. Benjamin, for himself and other heirs of the above-described estate, makes known to the court that heretofore Guy H. Allen and Geo. C. B. Rowan, who claimed to be legatees in the last will and testament of the aforesaid decedent, filed their petition in this court, praying, among other things, that Geo. Truesdell, executor of said estate, might be directed to pay over the legacies aforesaid and otherwise make distribution of said estate in the District of Columbia, claiming the right of such distribution here upon ground that the decedent at his death had his domicil in said District, &c. The undersigned filed an answer to said petition denying that the domicil of said Benjamin, deceased, was in the District of Columbia at the time of his death, but that the same was at Shelbina, Missouri; that his will had first been probated in Missouri;
566 that a suit was pending there to set aside said will on the
ground of its invalidity, &c. The court had directed testimony to be taken on the question of the domicil, which was done; and afterwards, on the hearing of that question, the court held and so decided that the domicil of the said Benjamin was in the District of Columbia at the time of his demise. Whereupon, immediately upon the announcement of said decision, the counsel for the undersigned gave notice that he would take an appeal from the said decision to the general term, which was not but should have been noted on the records with the decision of the case by the register of wills.

In consideration of the foregoing facts the said George H. Benjamin, by his counsel, R. P. Lowe, moves the court that the following *nunc pro tunc* entry be made at the close of entry embodying the decision of the court, namely:

And thereupon R. P. Lowe, counsel for George H. Benjamin, one of the heirs, gave notice of an appeal from the decision of the court in said case to the general term.

GEORGE H. BENJAMIN,
By his att'y, R. P. LOWE.

R. P. LOWE,
Att'y for G. H. Benjamin.

567 *Motion to Set Aside and Open up Order for Distrib'n.*

In the Supreme Court of the District of Columbia.

In the Matter of the Estate of John F. Benjamin, Dec'd.

To the court transacting probate business:

Now comes George H. Benjamin, one of the heirs interested, by his counsel, R. P. Lowe, and moves the court to vacate and open up for hearing the entry and the question involved therein made by this court on the 5th day of March, 1880, in the matter of the estate above specified, wherein the executor, George Truesdell, is authorized to make distribution of the money in his hands, and to pay the same to the distributees, etc., and sets down the following in support of his motion:

1. Because his honor Judge James, sitting in probate business only a week before, to wit, on the 28th Feb., 1880, refused to make a similar order, objections being made thereto. See the erasures of the entry prepared at that time by counsel on the other side, now on file.

2. Because immediately upon the decision of the question of
domicil being announced, on which the right of distribution
568 in this District in part depends, notice that an appeal would
be taken to the general term on that question was publicly
given in open court by counsel for George H. Benjamin, in presence of the counsel for two of the legatees in the will, Allen and Rowan, and the counsel for the executor, George Truesdell, which appeal will certainly be taken and effectuated within the time (30 days) prescribed by the rules of the court, and indeed as soon as this court will fix the amount of the appeal bond.

3. Because the question of the domicil in this case is still an open one, undetermined, and will not be settled until the same is finally adjudicated by the court in general term, where it will go by appeal. To pass an order of distribution in advance of the final settlement of this question would be unjust, as it might prove exceedingly injurious to the rights of the legal heirs of the decedent.

4. There is another element in this case showing the impropriety of making such an order at this time, namely: There is now pending in Shelby county, Missouri, a suit instituted by the legal heirs
of the decedent to set aside and have annulled the last will
569 and testament of John F. Benjamin, dec'd (under which the
legatees here claim), on the ground of its invalidity. In that
suit the executor and legatees here, with others, were made parties defendant. They plead to the merits of the suit without objection against, but submitting to, the jurisdiction of the court there. Two trials have been had thereon without reaching a verdict, the jury disagreeing, whereby the cause is still pending and stands for trial at the next term, to be held in April next. To order distribution here under said will before the termination of said suit would be contrary to all usage in such case, and lead to the greatest embarrassments in the final adjustment of the rights of the parties in interest. Judge James knew of the existence and condition of said

suit when he refused to order the executor to go forward and make distribution, and he also knew that notice of an appeal had been given.

5. After Judge James had refused to make an order of distribution it was not competent for counsel of the legatees or the executor to make a second application to another judge for the same thing, without notice to the counsel representing the heirs of the 570 decedent, which was not given, nor was the counsel present or had any knowledge or even suspicion that such a movement would be made under the circumstances.

6. Counsel representing the executor and legatees knew that Judge James had refused to make a similar order only a week before. They knew that notice of an appeal to the general term from the question of domicil had been given, and that 30 days within which to consummate the appeal under the rule had not yet expired. They knew of the pendency of the suit in Missouri to set aside the will and the present status thereof. They knew that the counsel for the heirs had several times expressed a desire to be heard on the bearing and effect of the suit in Missouri on the question of distribution here before the order should be made. Now, when they drew the order in question, and procured this court to have the same entered of record, if they did this without notifying the court of the foregoing facts, and thereby misled the court to do that which it would not have done with a knowledge of said facts, it is submitted, that their action in that regard furnishes an additional and stronger reason for opening the order in question that all the parties interested therein might have a hearing thereon.

R. P. LOWE,
Att'y for the Heirs, &c.

571 *Motion to Strike Paper from Files, &c.*

In the Supreme Court of the District of Columbia. Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

George Truesdell, executor of the will of John F. Benjamin for the District of Columbia, moves the court to strike from the files in this cause the paper filed herein March 15, 1880, by R. P. Lowe, Esq., an attorney of this court, purporting to be on behalf of the heirs of John F. Benjamin, and called "Motion to set aside and open up a certain order for the distribution of the estate," for the following reasons:

1. Said paper is not entitled in any court.
2. Said paper is not filed on behalf of any one having any interest in the matter of distribution.
3. Said paper is not supported by affidavit.
4. And for other reasons, which will be pointed out at the hearing hereof.

EDWARDS & BARNARD,
Attorney- for Executor, Geo. Truesdell.

572 To R. P. Lowe, Esq.:

The annexed motion will be heard on Friday, March 19, 1880, at the opening of the court, 11 a. m.

EDWARDS & BARNARD,
Att'ys for Ex'r.

Service accepted March 17, 1880.

R. P. LOWE,
Per JOHNSTON.

I unite in the above motion.

A. S. WORTHINGTON,
Att'y for Guy H. Allen & Geo. C. B. Rowan.

573 *Application for Nunc Pro Tunc Entry.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of John F. Benjamin, Dec'd.

In the application by the executor and legatees of the above estate for an order of distribution, on the hearing thereof the domicil of the decedent at the time of his death became an important preliminary question and one of the issues in the case, on which the court directed testimony to be taken; which being done, the case was heard on that question and determined by the court, to the effect that the domicil was, under the evidence, in the opinion of the court, in the District of Columbia; whereupon the counsel for the legal heirs of the said Benjamin at once, in open court, gave notice that he would take an appeal from the decision of the court on the question of the domicil to the general term of the supreme court of the District.

George H. Benjamin, one of the legal heirs of the said John F. Benjamin, in behalf of himself and coheirs, by their coun-
574 sel, R. P. Lowe, asks the court to direct the register of wills to make a *nunc pro tunc* minute of such notice of appeal of record following the decision of the court on the question of domicil as follows:

And thereupon counsel for the legal heirs of John F. Benjamin, dec'd, gave notice in open court that he would take an appeal from the decision of the court on the question of a domicil to the general term of the supreme court of the district of Columbia.

R. P. LOWE,
Att'y for Heirs, &c.

575 *Affidavit of R. P. Lowe in Support of Motion to Set Aside, &c.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of John F Benjamin.

R. P. Lowe, being duly sworn, deposeth and saith that he is the attorney of George H. Benjamin, one of the legal heirs of John F. Benjamin, deceased; that as such he participated recently in the trial of the question whether the domicil of the decedent at the time of his death was in the District of Columbia or at Shelbina, Missouri, tried before Judge James while transacting probate business; that immediately after Judge James delivered his opinion deciding that the domicil, under the evidence submitted, was in the District of Columbia, he gave public notice in open court that he would take an appeal from the decision thus made in the premises to the general term of the supreme court of said district; that Messrs. Barnard & Worthington, att'ys for the executor of said estate, and a part of the legatees of the last will and testament of the decedent aforesaid, were present in court at the time; that afterwards 576 Mr. Worthington presented for the signature of the court an entry to be made, embodying the decision of the court on the question of domicil, and also an order directing the executor to make distribution of the money in his hands, to which this affiant made objection, and the court promptly refused to make the order of distribution, as will appear by reference to the form of the entry drawn, showing that the order of distribution was erased.

This affiant further states that the decision of Judge James was made in the equity room below in the absence of the register of wills, Col. Webster, which accounts for the fact that no minute of of the notice of the appeal was made of record at the time.

This affiant further states that the facts set out in the 4th assignment of his motion for setting aside the order of distribution aforesaid, from information he believes to be true, except, perhaps, Mr. Rowan, one of the legatees under the will, was not made a party to the suit in Missouri for setting aside the will.

577 Again, this affiant states that no notice whatever was given to him that an application on the 5th day of March, 1880, would be made before this present judge of probate matters, for an order of distribution of the estate aforesaid; nor did this affiant have any knowledge, directly or indirectly, that such an application would be made at any time after the same order had been refused by Judge James only a week before, and in the face of the notice given that an appeal would be taken from the decision on the question of domicil.

R. P. LOWE.

Sworn to and subscribed before me this 19th day of March, 1880.

A. WEBSTER,
Reg. of Wills D. C.

578 *Affidavit of J. C. Heald.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In Re the Estate of JOHN F. BENJAMIN.

I, J. C. Heald, on oath say that I was present at the time the decree deciding the question of domicile in this case was read to and signed by Justice C. P. James; that I heard R. P. Lowe, Esq., say that he did not know whether said decree was final or interlocutory, and if he found it was final he would appeal; that he did not at that time give notice of appeal orally or in writing, but I understood him to mean that if he found he could appeal he wanted to do so at some future time; that I heard Mr. Worthington say that if he wanted to appeal he would have to file a supersedeas bond in double the amount involved, which would be in the sum of about $140,000. Mr. Lowe replied that the executor had all the fund in his hands, and that the legatees virtually had it; to which 579 Mr. Worthington replied that the legatees would have it very soon unless the supersedeas bond was at once filed. During the whole of the conversation above set forth I was standing by the side of said R. P. Lowe.

J. C. HEALD.

Subscribed and sworn to before me this 19th day of March, 1880.
R. J. MEIGS, *Clerk*,
By J. J. CAMP, *Ass't Clerk*.

580 *Affidavit of A. C. Bradley.*

In the Supreme Court of the District of Columbia, holding a Special Term for Probate Matters.

In Re Estate of JOHN F. BENJAMIN.

Andrew C. Bradley, being duly sworn, says that he was present at the time the decision of Justice James was rendered in this matter upon the question of domicil, and at the time the decree was read, considered, and signed; that he heard Judge R. P. Lowe, counsel for the contestants, in relation to said decree, say that he did not know whether the said decree was interlocutory or final, and whether he could appeal therefrom; that if he found it to be a final decree he wanted to take an appeal, or words to that effect. I did not understand him to take an appeal at that time, but merely to indicate that if satisfied that the decree was appealable he would thereafter take an appeal.

A. C. BRADLEY.

Subscribed and sworn to before me this 19th day of March, 1880.
R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't Clerk*.

581 *Notice of Appeal to General Term.*

In the Supreme Court of the District of Columbia, sitting in Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

Now comes George H. Benjamin, one of the legal heirs of the decedent aforesaid, and protesting that he has already given notice in open court of an appeal from the decision of Judge James on the question of domicil, made on the 28th day of Feb., 1880, in this case, now again gives notice in open court that he takes an appeal to the general term from the decision of Judge James aforesaid, and asks the court that said notice be made of record, which is accordingly ordered.

March 27, '80.

R. P. LOWE,
Att'y for Benjamin.

582 *Appeal Bond Fixed.*

MARCH 26TH, 1880.

To the register of wills:

In the matter of the estate of John F. Benjamin, dec'd, notice was given that an appeal would be taken to the general term from my decision on the question of the domicil of the decedent at his death. The penalty of the appeal bond in that case will be the usual amount sufficient to cover the costs, say $100, with approved security.

Endorsement by court: Take bond for $100. Ch. P. James, justice, &c.

583 *Order Granting Leave to File Am'd Motion.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

Now, this day, comes on for hearing the motion of George H. Benjamin, one of the heirs interested in the estate aforesaid, to set aside and open up the order of distribution, passed on the 5th March, 1880, and during the hearing of the same, the attorney for the said Geo. H. Benjamin asked leave to withdraw said motion for the purpose of amending the same and to present the same at a future session of the court, giving the requisite notice and copies of the service to counsel on the other side, which the court grants may be done within the next ten days, and directs this order to be made of record.

March 27th, 1880.

A. B. HAGNER,
Asso. Justice.

584 *Affidavit of Service, &c.*

In the Matter of the Estate of JOHN F. BENJAMIN.

To A. S. Worthington, Esq.:

On Friday, the 26th, I had written notice served on you that I would apply to the court, sitting in probate matters, on Saturday, the 27th inst., to approve the appeal bond executed by Geo. H. Benjamin, principal, and Thomas Wilson, Esq., surety, to perfect the appeal taken from the decision made by his honor, Charles P. James, on the 28th day of February, 1880, in which he held that the domicil of John F. Benjamin at his decease was in the District of Columbia. I now notify you that I shall make a similar application to his honor, Judge Hagner, on Monday the 29th inst., to approve the appeal bond in said case, with Thomas Wilson, Esq., as surety, who resides at 221 I street N. W.

March 27th, 1880.

R. P. LOWE,
Att'y for the Heirs of Benjamin.

585 District of Columbia,
County of Washington, } *ss:*

Personally appeared before me, a notary public for said District, Thomas J. Johnston, being personally well known to me, and makes affidavit that the foregoing is a true copy of a notice served by him on A. S. Worthington, Esq., on March 27th, 1880.

[SEAL.] IRVING WILLIAMSON,
Notary Public.

586 *Motion of Guy Allen for Leave to Withdraw Exhibits.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of John F. Benjamin.

The undersigned, on behalf of Guy H. Allen, moves the court for leave to withdraw from the files the exhibits offered in evidence by her in this court upon leaving in their place duly certified copies.

A. S. WORTHINGTON,
Att'y for Guy H. Allen.

Notes served this 31 day of March, 1880.

R. P. LOWE,
Att'y for Heirs.

I, on oath, say that I am informed and believe that it is the intention of the heirs of the above-named decedent to insist upon a trial of the issues pending in the circuit court, Shelby county, Mo., referred to in the proceedings in this case, at the ensuing April term of that court, and that the exhibits above referred to are important and essential evidence under said issues.

A. S. WORTHINGTON.

Subscribed and sworn to before me this 31st day of March, 1880.

[SEAL.] GEORGE M. DUNN,
Notary Public.

Please take notice that I shall call up the above motion on Friday, April 2, 1880, at the opening of the court or as soon thereafter as I can be heard.

A. S. WORTHINGTON,
Att'y for Guy H. Allen.

To R. P. Lowe, att'y for heirs.

587 *Order Giving Leave to Guy H. Allen to Withdraw Exhibits.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

Upon consideration of the motion of Guy H. Allen this day filed, and the affidavit thereto appended, counsel for the heirs of decedant appearing and making no objection—

It is, this 2nd day of April, 1880, ordered that said Guy H. Allen have leave to withdraw from the files of this court the exhibits in her behalf upon leaving duly certified copies thereof in their place.

And, upon motion of counsel for the heirs of the above-named testator, it is further ordered that they have leave to withdraw the exhibits filed by them upon the same terms.

A. B. HAGNER,
Asso. Justice.

588 *Motion of Geo. Benjamin to Vacate Order of Mar.* 5, 1880.

In the Supreme Court of the District of Columbia.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

To the court transacting probate business:

Now comes Geo. H. Benjamin, one of the heirs interested, by his counsel, R. P. Lowe, and moves the court to vacate and open up for hearing the entry and the question involved therein, made by this court on the 5th day of March, 1880, in the matter of the estate above specified, wherein the executor, Geo. Truesdell, is authorized to make distribution of the money in his hands, and to pay the same over to the distributees, etc., and sets down the following in support of this motion:

1. Because his honor, Judge James, sitting in probate business, only a week before, to wit, on the 28th Feb., 1880, refused to make in substance a similar order, objections being made thereto. (See the erasures of the entry prepared at that time by counsel on the other side, now on file.)

2. Because immediately upon the decision of the question 589 of domicil being announced, on which the right of distribution in this District in part depends, notice of an appeal to the general term was publicly given in open court by counsel for Geo. H. Benjamin, in presence of the counsel for two of the legatees in the will—Allen and Rowan—and the counsel of the executor, Geo. Truesdell, which appeal has been perfected within the time (30 days) prescribed by the rules of the court.

3. Because the question of the domicil in this case is still an open one, undetermined, and will not be settled until the same is finally adjudicated by the court in general term, where it is now pending by appeal.

4. After Judge James had refused to make an order of distribution, it was not competent for counsel of the legatees or the executor

to make a second application to another judge for the same thing, without notice to the counsel representing the heirs of the decedent, which notice was not given, nor was the counsel present or had any knowledge or even suspicion that such a movement would be made under the circumstances of the case.

590 5. There is another element in this case showing the impropriety of making such an order at this time, namely, that there is now pending in Shelby county, Missouri, a suit instituted by the legal heirs of the decedent to set aside and have annulled the last will and testament of John F. Benjamin, dec'd (under which the legatees here claim), on the ground of its invalidity. In that suit the executor and legatees here, with others, were made parties defendant; they plead to the merits of the suit, without objection against but submitting to the jurisdiction of the court there. Two trials have been had thereon without reaching a verdict, the jury disagreeing, whereby the cause is still pending and stands for trial at the next term, to be held in April instant.

Respectfully submitted, R. P. LOWE,
Attorney for G. H. Benjamin.
J.

R. P. Lowe, upon oath, states the matters and things set forth in the foregoing motion are true, so far as personally known to him, and such as are derived from information he believes to be true.
R. P. LOWE.

591 Sworn to and subscribed to before me, a notary public for the District of Columbia, this 6th day of April, 1880.
[SEAL.] A. G. HEYLMAN,
Notary Public.

592 *Affidavit of Service of Notice.*

Messrs. Edwards and Barnard:

You will please take notice that I have this day filed in the probate office or court an amended motion to set aside the order of distribution in the matter of the estate of John F. Benjamin, dec'd, made on the 5th of March last, of which the paper accompanying this notice is a copy. I shall read in support of this motion my affidavit filed with the first motion, of which this is an amendment, which you have seen and read, and also Judge James' statement, a copy of which will be handed you with this notice. I will call up this motion for hearing next Friday in the probate court, or as soon thereafter as the court will hear the same.

April 6th, 1880.

R. P. LOWE, *J.*

April 6th, 1880, personally appeared before me Thos. J. Johnston, being well known to me, and made oath that the foregoing is a true copy of the copy of the notice served by him on Messrs. Edwards and Barnard the day above written.
[SEAL.] IRVING WILLIAMSON,
Notary Public.

593 *Judge James' Statement (written in pencil).*

Mr. Lowe, immediately upon the delivery of my opinion on the question of domicil in the Benjamin case, said that he took an appeal. Mr. Worthington remarked that no appeal could be taken at that stage of the case; but I did not understand Mr. Lowe to alter his position or to withdraw anything. He seemed not to press the matter of appeal, but I do not understand that he withdrew anything. It was, perhaps, his silence that caused the register to omit notice on the record; but I conceive that his notice stands, because not formally withdrawn.

CHAS. P. JAMES, *Justice.*

[On the margin:] (This opinion was delivered in equity court-room without notice to the register of wills. W. J. G.)
[On the margin:] The register was not present. A. W.

594 *Affidavit of A. S. Worthington.*

In the Supreme Court of the District of Columbia, in Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Affidavit of A. S. Worthington in reply to the affidavit of R. P Lowe, filed in support of his motions for the entry of an appeal *nunc pro tunc*, and to set aside the order of distribution heretofore made in this case.

I on oath say that I was in the court-room when Justice James rendered his decision in this case as to the domicil of the testator, and presented to him for signature the decree of February 28, 1880, and that I heard all that said R. P. Lowe said at that time in reference to this case, and have a clear and distinct recollection as to the occurrences in court at that time in reference to this case.

After the decision was announced said Lowe arose and
595 said, in substance, that he supposed the decision was merely interlocutory, but that if he should find it was an appealable order he would then take an appeal. I then presented to the court said decree, including the words erased, and read the whole paper to the court and counsel. Judge James said, referring to the words erased: "I think that follows, but I will make no ruling on the subject now." Judge James then said something, which I did not understand, about an appeal, when I remarked to Mr. Lowe, who stood by my side in front of the judge's desk, "I give you notice *I give you notice* that if you intend to supersede we shall ask for a supersedeas bond in the sum of $140,000. He replied, "You have the money," and I said to him in the hearing of everybody in the court-room, "We will have it very soon if you don't supersede," and he made no reply. I did not say that no appeal could be taken at that stage of the case, or anything intimating that I thought an appeal would not lie from the decree as to domicil. Nothing further was

said by Mr. Lowe as to an appeal, and I never knew of his
596 taking an appeal till he filed the paper purporting to be an
order to enter an appeal, which he wrote on Saturday, the 27th of March, 1880, and asked the court to sign, and at the suggestion of the court amended the same by striking out the word "will," and signed it himself.

I further say that Judge James has never to my knowledge been asked to make an order of distribution in this case, unless the petition of Guy H. Allen and George C. B. Rowan, filed on the — day of January, 1880, is to be considered as such, and that application was made *pro forma* to raise the question of domicil.

I further state that I attended the trials of the case in Missouri referred to in the affidavit of said Lowe, and as attorney for Guy H. Allen at those trials became thoroughly acquainted with the whole case; that George C. B. Rowan was not present at either trial, in person or by counsel, and filed no answer in said case, and in no way appeared in said cause. He did not employ me as his counsel in this case in any form until about the first day of January last.

597 No issue as to the domicil of said testator was made up in the case in Missouri, and no evidence as to the same was presented by either side.

I further state that immediately after the entering of the decree of February 28th, 1880, as to the domicil of said testator, I demanded from George Truesdell, executor of said testator, the legacies of my clients, and notified him if he failed to pay the same forthwith I should hold him responsible for any loss that they might sustain by reason of such failure. His counsel, Mr. Barnard, proposed to get the usual order of distribution before payment, and advised Mr. Truesdell, in my presence, not to pay said legacies till such order should be made, and he did accordingly refuse.

I was present when Mr. Barnard, as counsel for said Truesdell, presented the final account of the executor and the order of distribution, which was then signed by the justice holding the special term for probate business, and admit that I said nothing to the court then except that in response to a remark of the court that
598 the commissions of the executor were large, I replied that
most of the sum claimed by him was payable from the funds bequeathed to my client, and that she assented to the reasonableness of the same. And I further say that said order of distribution has been fully complied with by said executor.

In reply to the statements of R. P. Lowe, Esq., in reference to the proceedings in Missouri, I say further that, as counsel for Guy H. Allen, I was present in the circuit court of Shelby county, Missouri, on the 9th of April, 1880, when the case of Benjamin *et al. vs.* Ennis *et al.* was reached, and insisted upon a trial on the ground that the probate of the will here and the decree of this court as to the domicil of the decedent were conclusive as against his heirs in that court, and that counsel there for said heirs thereupon asked for and, against my objection, obtained a continuance on the ground that an appeal had been taken from said decree.

AUGUSTUS S. WORTHINGTON.

Subscribed and sworn to before me April 16, 1880.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

599 *Affidavit of Job Barnard.*

In the Supreme Court of the District of Columbia. Special Term for Orphans' Court Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Job Barnard swears that he is one of the counsel for George Truesdell, executor of the will of said Benjamin for said District, and as such he was in court on February 28, 1880, when Mr. Justice James announced his decision on the question of domicil. That he was sitting in the present equity court room when he decided the domicil of the said testator to be in this District at his death, and the register of wills was not in the room when the decree following the decision was signed. That when Mr. Worthington read the decree, as prepared by him, Mr. Lowe objected to the final clause, and Justice James said that he supposed that would follow as a matter of course, but as he had only announced that he was considering and deciding only upon the question of domicil he would now go no
600 further. Thereupon Mr. Worthington erased the final clause of form of entry, and handed the decree to the justice, who thereupon signed it.

Mr. Lowe did not ask that anything further should be added, but said, as the decree was about to be signed, that he gave counsel notice that if he found that the said decree was appealable he intended to take an appeal.

Thereupon Mr. Worthington said that if an appeal was taken to operate as a supersedeas he should insist that a bond should be given in double the amount of the money involved, to wit, in the sum of about $140,000.00. Mr. Lowe then remarked that "you hold the money;" and Mr. Worthington said in reply, "We will have it very soon, unless you take an appeal and supersede." That the decree was then signed, no further words passing which affiant heard, and Mr. Lowe retired from the court-room without further notice or action.

Affiant's memory is clear and distinct as to the words used by Mr. Lowe, and he is positive that no appeal was then taken by
601 him, and no notice given by him that he would certainly take an appeal, but only that he would appeal if he ascertained that the decree was of such a nature that an appeal would lie.

That therefore, as attorney for said Truesdell, he filed a final account with the register of wills, having first published the final notice required by law, the time therein named for final distribution having expired; and on the 5th of March, 1880, after the said account had been duly examined by the register of wills, and found to be correct, as counsel for the said executor, he presented the said order for distribution to his honor, Justice Hagner, then holding special term for orphans' court business, early in the day, explaining the

situation of the case, and asking that it be signed. Messrs. Christy
and Brady, attorneys for Joshua M. Ennis, executor for Missouri,
appeared and asked time to examine the account before the order
should be signed, and the court gave them time. After three
602 o'clock p. m. of the same day, the said attorneys having examined the said account, and being satisfied therewith, the
attention of the court was again called to the case, and affiant stated that the only persons who would object to the order were the heirs of John F. Benjamin, who were contesting the will in Missouri and who were represented in this city by Gov. Lowe. The court thereupon read the decree passed by Justice James, and the notice published for final distribution, and signed the order. That affiant had heard of no further steps taken or contemplated by Mr. Lowe, after the order was signed by Justice James, February 28, 1880, and thereupon advised his client that he would, in his opinion, be protected in paying out and distributing the said estate; and thereupon the said estate was fully paid over and distributed to the several legatees and their representatives.

That affiant still heard nothing from said Lowe, or the said heirs, until the 10th day of March, 1880, when his client brought him the following notice from Gov. Lowe, (the original of which is here annexed).

603 That the distribution of said estate had all been made some
days before the receipt of said notice, having been completed,
as affiant is informed, on the 6th day of March.

JOB BARNARD.

Subscribed and sworn to before me this 16th day of April, 1880.

A. WEBSTER,
Register of Wills, D. C.

Notice.

Received March 10th, 1880, at 4 p. m.

G. T.

R. P. Lowe, attorney-at-law and solicitor of land and other claims,
No. 510 F, northwest.

WASHINGTON, D. C., *March 10th*, 1880.

George Truesdell, adm., &c.:

I have just ascertained, to my surprise, that Mr. Worthington,
the att'y for Mrs. Allen, on last Friday had procured an order
from the judge sitting in probate matters, authorising a distribution
of John F. Benjamin's estate, of which you are the executor
604 or administrator, and, among other things, directing you to
pay over to the legatees named in the will whatever funds
you may have in your hands for distribution. I charge that this order was obtained surreptitiously by concealing from the judge the fact that Judge James had refused to make such order only a week before, and also concealing the fact that I had taken an appeal, or rather gave notice that I would appeal, from Judge James' decision,

of which both you and Mr. Worthington had full notice, being present at the time. I further state that the above order was applied for and taken without notice to me and in my absence, and that I shall apply for its vacation at the first meeting of the court from this date. The appeal will be perfected within the time prescribed by the rules of the court, and you are hereby warned not to pay over said money to any one till the further order of the court, and that if you have done so you and your sureties will be held responsible therefor.

R. P. LOWE,
Att'y for Heirs of Benjamin.

605 *Affidavit of Geo. Truesdell.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

I, George Truesdell, on oath say that on the 10th day of March, 1880, I received from R. P. Lowe, Esq., the original letter which is attached to the affidavit of Mr. Job Barnard, made in this cause; that at the time said letter was received by me I was executor of the will of John F. Benjamin, deceased, and at that time the said estate had been fully distributed under the order of the court made March 5, 1880. I further state that I was present when the order of distribution in this case was presented to Mr. Justice Hagner for signature by my counsel, and that Mr. Worthington, who was also present, said nothing to the court at that time, except that in response to a remark by the court as to my commissions, Mr. Worthington said his client was satisfied with them.

GEO. TRUESDELL.

Sworn to before me this 15th day of April, 1880.
[SEAL.] GEORGE M. DUNN,
Notary Public.

606 *Affidavit of J. C. Heald.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

I, on oath, say that I was in the court-room when Justice James delivered his opinion as to the domicil of the testator, John F. Benjamin; that immediately thereafter Mr. Worthington presented to said justice a decree for signature, after he had read the same aloud; R. P. Lowe, Esq., remarked that he did not know whether this was a final decree or interlocutory order, and if he found out it was a final decree he wanted to appeal. Mr. Worthington remarked, in a tone sufficiently loud to be heard by all in the court-room, that if he wanted to supersede he wanted a bond in double the amount involved, viz., a bond for $140,000. My recollection as to these occurrences is distinct and clear, and I am positive that Mr. Worthington did not say or intimate that the decree in question was an appeable —, but, to the contrary, he distinctly told Mr. Lowe 607 that unless he filed his supersedeas bond at once he would soon have the money due his client from the said estate. During the whole of the conversation referred to I was standing close by Mr. Worthington and Mr. Lowe.

J. C. HEALD.

Subscribed and sworn to before me this 16th day of April, 1880.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Ass't Clerk.

608 *Affidavit of Geo. C. B. Rowan.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

I, George C. B. Rowan, on oath say that I am one of the legatees named in the will of John F. Benjamin, deceased. I was at no time present at either of the trials of the case of Benjamin *et al. vs.* Ennis *et al.* at the circuit court of Shelby county, Missouri. I did not employ counsel nor did I ever authorize any one to appear for me in said cause in that court.

GEORGE C. B. ROWAN.

Personally appeared before me George C. B. Rowan, and being duly sworn made oath that the foregoing statement was true. This at Washington, D. C., this 15th day of April, A. D. 1880.

[SEAL.] LEMUEL BURSLEY,
Notary Public.

609 *Affidavit of E. D. F. Brady.*

In the Supreme Court of the District of Columbia. Special Term for Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN.

I, Eugene D. F. Brady, on oath say that I was in court when Mr. Justice James delivered his opinion in this case as to the domicil of the decedent and that I left the room immediately after he had finished. Before I had gotten out of the door I heard R. P. Lowe, Esq., say something about the decree not being an appealable one and about intending to examine into that point. His precise words I cannot recollect except that I remember distinctly hearing him use the word interlocutory. I have stated all that I can remember of what occurred at that time.

E. D. F. BRADY.

Subscribed and sworn to before me this 16th day of April, A. D. 1880.

[SEAL.] GEORGE M. DUNN,
Notary Public.

610 *Decree Overruling Motions of Counsel for Heirs, &c.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

This cause came on to be heard upon the motion of counsel for the heirs of said John F. Benjamin to set aside the order of distribution made herein on the 5th day of March, 1880, and the motion of the same counsel to have an appeal entered *nunc pro tunc* from the decree as to the domicil of the decedent made in this court on the 28th day of February, 1880, and upon the affidavits filed by said heirs and by Guy H. Allen, and was argued by counsel for said heirs and by counsel for George Truesdell, executor, and for said Guy H. Allen.

And upon consideration thereof it is this 16th day of April, 1880, ordered that said motions be, and they hereby are, overruled.

A. B. HAGNER,
Asso. Justice.

611 *Notice of Appeal.*

In the Supreme Court of the District of Columbia. Probate Jurisdiction.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

In the consideration and decision of the court overruling the motion of the heirs of the decedent to set aside or open up the order of distribution made on the 5th day of March, 1880, counsel for the heirs aforesaid excepts and appeals to the court in general term, of which notice was duly given at the time in open court.

March 16th, 1880.

R. P. LOWE,
Att'y for Heirs.

APRIL 16, 1880.

The penalty of the appeal bond from the order this day passed is fixed at $100.

A. B. HAGNER,
Asso. Justice.

612 *Motion to Dismiss Appeal from Decree as to Domicil.*

In the Supreme Court of the District of Columbia. In General Term.

In re Estate of JOHN F. BENJAMIN.

Guy H. Allen, one of the legatees under the will of the said John F. Benjamin, moves the court to dismiss the appeal taken by George H. Benjamin from the decree of the special term as to the domicil of the decedent, on the following grounds:

1. Because the record in said cause has not been printed.

2. Because the said George H. Benjamin has no standing in court and no right to take and prosecute said appeal.

A. S. WORTHINGTON,
Attorney for Guy H. Allen.

Take notice that I shall call up the above motion at the opening of the court in general term on Monday, the 27th day of September, 1880, or as soon thereafter as counsel can be heard.

A. S. WORTHINGTON,
Att'y for Guy H. Allen.

To R. P. Lowe, Esq., att'y for George H. Benjamin.

Service of copy acknowledged this 24th day of Sept., 1880.

R. P. LOWE,
Att'y for Appellant.

613 *Motion to Dismiss Appeal from Order of Distribution.*

In the Supreme Court of the District of Columbia. In General Term.

In the Matter of the Estate of JOHN F. BENJAMIN.

Guy H. Allen and George C. B. Rowan, legatees under the will of the above-named testator, move the court to dismiss the appeal taken from the order of the court in special term for probate business made on the — day of ———, 1880, authorizing a distribution of the fund in the hand of George Truesdell, executor, on the following grounds:

1. Because said order is not an appealable one.
2. Because the appellant as heir of the decedent has no standing in this court, and he claims only as heir.
3. Because the rules of this court relative to giving bond on appeal have not been complied with by the appellant.
4. Because the order of this court in special term fixing the penalty of the appeal bond in this particular instance have not been complied with by the appellant.
5. Because the appellant has not printed an abstract of the record as required by the rules of this court. 614

A. S. WORTHINGTON,
Attorney for Guy H. Allen & Geo. C. B. Rowan.

Take notice that I will call up the above motion when this case is reached in the call of the calendar.

A. S. WORTHINGTON,
Att'y for Allen & Rowan.

To Sol. S. Henkle, att'y for appellant.

I, W. S. Wheeler, on oath say that I served a copy of this motion on the clerk of Gen. S. S. Henkle, on finding him absent from the office.

W. S. WHEELER, *Clerk.*

Subscribed and sworn to before me Jan'y 12, 1881.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

615 *Motion to Strike from Files Certain Papers.*

In the Supreme Court of the District of Columbia. In Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN.

Guy H. Schley, formerly Guy H. Allen, one of the legatees under the will of the above-named testator, comes now and suggests to the court that she was married to James M. Schley, of the city of Cumberland, in the State of Maryland, at St. John's Church, in this city of Washington, by the rector of said church, on Tuesday, the 18th day of October, 1881, and prays that henceforth in these proceedings she may be known by her present name of Guy H. Schley.

And the said Guy H. Schley and George C. Rowan, another of said legatees, move the court to instruct the register to remove from the files of this court three certain papers on file in the matter of the estate of said John F. Benjamin, on the ground that they have never been filed in this court in such manner as to make them a part of the record or evidence in this case.

Said papers are more particularly described as follows:

616 1. A paper purporting to be a copy of a petition filed in a court in Shelby county, Missouri, by George H. Benjamin and others, in which the validity of the will of the above-named testator is assailed.

2. A paper purporting to be a copy of an answer to said petition on the part of said Guy H. Schley, then Guy H. Allen.

3. A paper purporting to be a copy of an answer to said petition on the part of George Truesdell, executor in this District of said will.

A. S. WORTHINGTON,
Solicitor for Guy H. Schley, formerly Guy H. Allen, & for George C. Rowan.

Take notice that on Tuesday, October 25, 1881, at the opening of the court, or as soon thereafter as counsel can be heard, I will call up the above motion.

A. S. WORTHINGTON,
Sol'r for Guy H. Schley et al.

To S. S. Henkle, Esq., sol'r for G. H. Benjamin *et al.*

Service accepted this 21st day of October, 1881.

S. S. HENKLE.

617 In the Supreme Court of the District of Columbia, holding a Special Term for Probate Business.

In the Matter of the Estate of JOHN F. BENJAMIN, Dec'd.

The foregoing motion having been called up in the special term before the undersigned, and the court being of opinion the matter involved in said motion is more properly a question for the determination of the court in general term, this motion is certified to the court in general term, there to be heard in the first instance.

Oct. 28, '81.

A. B. HAGNER,
Asso. Justice.

618 *Decree in General Term.*

In the Supreme Court of the District of Columbia. In General Term.

In the Matter of the Estate of JOHN F. BENJAMIN, Deceased.

This case came on to be heard upon the appeal taken by George H. Benjamin from the order of this court in special term of 28th February, 1880, and upon the appeal taken by the counsel for the heirs of John F. Benjamin, deceased, from the order made by this court in special term, on the 16th day of April, 1880, refusing to set aside the order of distribution in this case, and also upon the motions filed by Guy H. Schley and George C. B. Rowan to dismiss said appeals, and was argued by S. S. Henkle, Esq., counsel for appellants, and by A. S. Worthington, Esq., counsel for said Guy H. Schley and George C. B. Rowan, and, upon consideration thereof, it is, this 3rd day of May, 1882, ordered, adjudged, and decreed that the motion to dismiss said appeal from said order of February 28th, 1880, be, and it is hereby, overruled, and that the motion to dismiss the appeal from said order of April 16th, 1880, be granted,
618 and that said last-mentioned appeal be, and it is hereby, dismissed.

It is further ordered, adjudged, and decreed that said order of this court, in special term of February 28th, 1880, declaring that the domicil of said John F. Benjamin at the time of his death was in this District, and that this court has original jurisdiction in the matter of his estate, be, and it is hereby, affirmed.

From this decree counsel for said heirs of John F. Benjamin, in open court, prays an appeal to the Supreme Court of the United States, which is allowed, and the penalty of the appeal bond, which is not to operate as a supersedeas, is fixed at the sum of five hundred dollars ($500).

By order of the court:

D. K. CARTTER,
Ch'f Justice.

620 In the Supreme Court of the District of Columbia, the 5th day of May, 1883.

In the Matter of the Estate of JOHN F. BENJAMIN, Deceased, upon Petition of GUY H. ALLEN and GEORGE C. B. ROWAN.

Know all men by these presents that we, George H. Benjamin, principal, and Wm. W. Kirby, surety, are bound unto the above-named Guy H. Allen in the sum of five hundred dollars, to be paid to the said Allen and Rowan, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 5th day of May, 1883.

Whereas the above-named appellant, George H. Benjamin, has prosecuted *their* appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named appellant, George H. Benjamin, shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

WM. W. KIRBY. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved May 7th, 1883.

D. K. CARTTER, *Ch'f Just.*

Endorsed on cover: District of Columbia supreme court. No. 225. The Heirs of John F. Benjamin, deceased, appellants, *vs.* Charles L. Du Bois, administrator of Guy H. Schley, dec'd (formerly Guy H. Allen). Filed 7th May, 1883.

[illegible]

Supreme Court of the U. S.

OCTOBER TERM, 1885.—No. 225.

THE HEIRS OF JOHN F. BENJAMIN, DECEASED,
Appellants,

vs.

CHARLES L. DUBOIS, ADM'R OF GUY H. SCHLEY,
DECEASED (PROPERLY GUY H. ALLEN).

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF S. S. HENKLE, COUNSEL FOR APPELLANT.

Supreme Court of the U. S.

OCTOBER TERM, 1885.—NO. 225.

THE HEIRS OF JOHN F. BENJAMIN, DECEASED,
Appellants,

vs.

CHARLES L. DUBOIS, ADM'R OF GUY H. SCHLEY,
DECEASED (PROPERLY GUY H. ALLEN).

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF S. S. HENKLE, COUNSEL FOR APPELLANT.

STATEMENT OF THE CASE.

This proceeding originated in the Probate branch of the Supreme Court of the District of Columbia. In that court it was entitled "In Re Estate of John F. Benjamin dec'd.

The question to be determined was, the domicile of the testator, whether it was in the city of Washington or in the town of Shelbina, Missouri.

The special term on the 28th of February 1880 decreed that the domicile of the testator at the time of his death was in this city. From this decree an appeal was taken to General Term within the thirty days allowed by the rules of the court.

On the 5th of March 1880 notwithstanding notice of appeal had been given, the court without any notice to the appellants, passed a decree distributing to the legates under the will in this District about $70,000.

The appellants claim that they also appealed from this decree.

The court in General Term upon the motion of the appellees to dismiss the appeals decided that the appeal from the decree of February 28th fixing the domicile was well taken and refused to dismiss it. The motion to dismiss the the appeal from the order of distribution was sustained, and the court refusing to hear the case upon the merits proceeded to affirm the decree of February 28th, declaring the domicile to be in this District.

Assignment of Errors.

1. The Court erred in sustaining the motion to dismiss the appeal from the Special Term from the decree of distribution.
2. The Court erred in affirming the decree of the Special Term fixing the domicile of Benjamin in this District at the time of his death.

Statement of Facts as Shown by the Record.

John Forbes Benjamin died in this city, on the 8th day of March, 1877. He was a lawyer by profession, and had been three times a member of Congress from the State of Missouri. He was possessed of considerable ready means, and in the fall of 1874 he came to Washington with a view to making some investments of his capital, and possibly with the expectation, if suited in every way, to ultimately remove here. Falling in with Mr. Otis

Bigelow, a private banker of this city, he concluded to go into business with him. They entered into partnership for a term of five years from October 1, 1874, Benjamin putting into the concern $50,000 in cash. He had a wife but no children. She lived in Shelbina, Missouri, where he had lived for many years. He owned the best residence in the town, which he called "Vesper Place," which was handsomely and expensively furnished. He left his wife with all his furniture, horse and carriage, servants and everything pertaining to his home establishment, which he continued to maintain during his sojourn here. Shortly after he went into business with Bigelow he began to look about the city with a view to exchanging his residence in Missouri for one here. When it became known that he was a possible buyer of real estate a number of persons engaged in that business quite persistently sought to accommodate him. He uniformly proposed, when he found any property that he thought might suit him, to exchange "Vesper Place." At one time, about March, 1875, he had agreed upon an exchange with a Mrs. Schoolcraft, but the transaction finally fell through because of the inability of Mrs. S. to give him an unincumbered title, and upon the failure to make this exchange he abandoned all idea of removing to Washington or of leaving his home in Shelbina. (See dep. of Charles King, p. 155 Rec.) In the summer of 1876 it is certain that he had made up his mind to return to Shelbina to stay. (See letter to King, p. 159 Rec.; also letter to his wife, June 11, 1876, and letter to Miller p. 98, letter to Mrs. Allen p. 103.) He had arranged to practice law with his old friend King upon his return home. (See King's tes., p. 158 Rec.) During his stay here he lived at boarding houses, going home two or three times a year.

He purchased a piano, a fine music box, books, many oil paintings, &c., which he sent to and placed in his home at "Vesper Place." (See King's tes, pp. 161–2.) He was making arrangements also to start a national bank at Shelbina. (See tes. of James H. Gough, p. 146.) He made a subscription of $5,000 for the erection of a court house in Shelbina. (See tes. of Wm. A. Reid, p. 151, and King's tes.) He was planning improvements upon "Vesper Place," which he intended making when he got back to stay in the spring of 1877. (See tes. of Picket, p. 165, and of Swort, 167–8.) He attended the courts in Missouri, and to some extent kept up his practice. When death surprised him he was about winding up his business here and returning home to stay. In his last illness Mr. Benjamin made a will which was written from his dictation by George Truesdell, who was designated to wind up his business in this city.

After his death the will was sent by Truesdell, by the advice of his counsel, to Shelbina, Mo., for probate. It was there probated and letters testamentary were granted to Joshua M. Ennis, the executor named in the will. (See letters testamentary, p 10.) After the probate of the will in Missouri a certified copy of the will and probate was procured by Mr. Truesdell, and it was upon his petition admitted to record here, and letters testamentary were granted to him of the personalty within this District. (See Rec., p. 7.) The will gives to Guy H. Allen all the interest of the testator in the firm of Bigelow & Benjamin, and all debts owing to testator in the District of Columbia, and all his real estate owned here, (see will, p. 2,) the whole aggregating perhaps $75,000. After the probate of the will in Missouri a bill in equity was filed in the circuit court out there for the purpose of contesting the will according to a provision of the Missouri statute and issues were made up for trial by a jury.

The bill charges that the will was procured by fraud and undue influence exercised upon testator, at the time and prior thereto, by Guy H Allen and her sister Minnie Hammond, who was to take the devise and bequest of her sister Allen in case of her death.

. These ladies were in no way related to the testator, but his correspondence with them found in the record, shows that he was much infatuated with Mrs Allen. It could hardly have been *Parental* affection.

To this bill Mrs. Allen, Mrs. Hammond, Geo. Truesdell, Geo. Rowan and all other persons interested in the estate were made parties See bill p. 175 *et seq. rec.*

The bill sets out that Benjamin at the time of his death was a resident of the town of Shelbina, in the county of Shelby and State of Missouri, "temporarily attending to business in the city of Washington, District of Columbia."

Both Truesdell and Mrs. Allen answered the bill.

The record does not show how they were brought into court, but they must have voluntarily appeared and answered, as their answers were both sworn to in this city.

Neither answer questions the jurisdiction of that court, nor denies that Shelbina was the domicile of Benjamin at the time of his death.

Mrs. Allen's answer says that Benjamin was regularly engaged in business in this city, and had entered into a partnership with Bigelow for a term of five years, which had not elapsed. See answer p. 182.

The case was tried twice, the jury disagreeing each time. Upon the first mistrial the jury stood six and six; upon the second they stood three for the will, nine against it. See ans. of Geo. H. Benjamin, p. 28.

After the second trial Mrs. Allen and Rowan, the two legatees residing in this District, filed a petition p. 19 rec. in the Supreme Court of this District alleging that this was the domicile of Benjamin at the time of his death, and praying that distribution be ordered of the money in the hands of the adm'r here.

Justice James, holding the special term for Probate business on the 9th of January 1880, made an order that the prayer of the petitioner be granted unless cause to the contrary be shown by the 23rd of January 1880, and directed that the heirs of Benjamin be notified. See rec. p. 21.

Answers were filed by Truesdell p. 24, and by the others claiming under the will pp. 26-7, all concurring in the prayer for distribution, and by Geo. H. Benjamin, one of the heirs at law, denying that this was the domicile and setting up fully the pending contest in Missouri, as to the validity of the will.

On the 24th day of January, the court ordered that testimony be taken within twenty-five days, as to the domicile of the said John F. Benjamin at the time of his death. See rec. p. 29.

Testimony was accordingly taken pro and con, and the case came on for hearing on the 28th day of February, 1880, before Justice James, who decreed that the domicile of Benjamin at the time of his death was in the city of Washington "*and that this court has original jurisdiction of his estate.*" See rec. p. 186.

From this decree an appeal was duly taken under the rules of the court to the General Term.

On the 5th of March, five days later, Justice Hagner, holding the same court decreed distribution of this large fund, which was at once made, notwithstanding notice of appeal from the decree of February 28th, had been given in open court at the time it was announced, and the time for appeal had not expired. Rec. p. 187.

It will be observed that the decree approving the executor's accounts and distribution was based upon the decree of the 28th of February fixing the domicile, it was made without notice to the heirs of Benjamin, who were treated as having no further right to be heard; after reciting the agreement of the legatees the decree proceeds' "*and no objection or exception being made or taken by any of the parties claiming under the will, all being here represented. etc.*"

ARGUMENT.

When Benjamin died it was conceded by everybody interested in his estate that his domicile was in Shelbina, Shelby County, Missouri. He was a lawyer of ability and experience, and thoroughly understood where his domicile was. He dictated his will, and in it he describes himself "*of the town of Shelbina, County of Shelby and State of Missouri.*"

He directed that his remains be forwarded to *Shelbina, Missouri*, "*for such cemeterial disposition as may be had there. I leave it all to the discretion of my wife aforesaid.*"

He appoints his friend Joshua M. Ennis, of Missouri, his Exr., so far as his property in Missouri was concerned; and he appointed George Truesdell to "wind up his business in the District of Columbia, so far as would not interfere with the rights of Otis Bigelow, his surviving partner." He does not call Truesdell Exr., and didn't intend him to be. He gave his interest in the bank to Mrs. Allen, and most of his other personalty and all his real estate in this District. He owed no debts. He contemplated that Truesdell should settle his business outside the Bank and that Mrs. Allen should take possession of all his realty and his interest in the Bank without passing through the hands of Truesdell; that she might continue the partnership with Bigelow if he and she chose to do so. He directed that Truesdell should not interfere with the rights of Bigelow; that Truesdell should collect his outside debts, and after handing over to Mrs. Allen that which belonged to her and giving Rowan his $100, that he should turn over the residue to the Exr. at the domicile. This was the scheme of the will.

He directs that his body be taken back to Shelbina, to be buried under the direction of his wife.

The whole showing that he considered Shelbina, Missouri, as the focus of his affairs—his *home*.

Mr. Truesdell thought so, too; and so thought Mrs. Allen and her attorney and all interested in the will. And so Mr. Truesdell, with the assent of Mrs. Allen and Mr. Rowan, sent the will to Mr. Ennis for probate. He was under no obligation to send it, unless that was the legal domicile of Benjamin. On the contrary, the law here made it his duty to present it to this court for probate, "within three calendar months after the death of the testator, under the penalty of such fine as the court shall in their discretion think proper," if he failed to do so, if this was the domicile of the testator.

See Thompson's Dig., p. 347, Sec. 7.

By the Missouri law, the Probate Court there had no jurisdiction to take the original probate, if Benjamin's legal domicile was not there, and the probate would be voidable if not void.

Stuart vs. Pettus, 10 Mo., 755.

It must be presumed that the Missouri court found the jurisdictional fact of domicile before admitting the will to probate.

Townsend vs. Estate of Downer, 32 Vt. at p. 216.

Where a court takes jurisdiction the jurisdictional facts will be conclusively presumed to be found, unless the contrary appears on the face of the record.

By the common law the probate of a will of personalty is a final judgment and binding upon all persons in interest who had notice and the opportunity to contest it, unless reversed on appeal or set aside in the court where entered. It cannot be attacked collaterally, unless the want of jurisdiction appears on the face of the record.

Loy vs. Kennady, 1 Watts and Serg., 396;
Logan vs. Watts, *et al*, 5 Serg. and Raw., at p. 213;
Crippin vs. Dexter, 13 Gray, 330;
Dublin vs. Chadboun, 16 Mass., at 441.

By the law of Missouri a will either of personalty or realty may be contested by anyone interested by filing a petition in the Circuit Court at any time within five years, and, thereupon, an issue is made up and tried by a jury, whose verdict is final unless a new trial be granted or an appeal be taken, "in matter of law," to the Supreme Court. If no one appears within five years to contest the will by filing a petition in the Circuit Court, the probate is final.

See Rev. Stats. of Mo., Vol. 2, p. 1571, Sec's. 30, 31, 32.

During the five years the probate could, of course, only be attacked in the mode provided by the Statute, and is otherwise binding and conclusive upon all persons interested and in all other courts, unless revoked by the court where entered.

It is well settled in England and in this country that a will of personalty can have no effect until it is regularly probated at the domicile of the testator. It is judged by the law of the domicile. If valid there it is valid everywhere; if invalid there, it is valid nowhere.

Nat vs. G. W. Coon, 10 Mo., 543;
Stewart vs. Pettus, Ibid, 755;
In Re Sarah Stewart, 11 Paige, 398;
Desesbat vs. Berquier, 1, Binney, 336;
Gratton vs. Appleton, 3 Story, 755;
Enckin *et al.*, vs. Wylie *et al.*, 10, House of Lords, 1;
2 Kent, 12 Ed., p. 429 and note.

What is meant by *probate*, is not presenting an exemplified copy of a will and the probate from another court, and having it admitted to record upon that; but it is the production of the original will in court, the notification of the heirs at law and the production and examination of the subscribing witnesses, with the privilege of cross-examination by the heirs at law.

Seguine vs. Seguine, 2 Barb., 385.

I concede that the law of Missouri does not require notice to the heir to probate a will, but upon proof of the subscribing witnesses it may be admitted at once to probate.

See Rev. Stats., Vol. 2, p. Sec.

This is, of course, for the reason that the heir is not obliged to contest the will before probate, but may at any time within five years file his petition for that purpose in the Circuit Court.

Mrs. Allen has never called in question the Missour probate, but always has and still acquiesces in it as the foundation for her title. If she wished to, she could only question it in the Probate Court of Missouri, where it was entered. In no other forum or jurisdiction can she question the probate or the facts upon which the court took jurisdiction.

The record shows that Mr. Truesdell sent the will to Missouri for probate, because that was the domicile of the testator. And this was done upon the advice of counsel and with the acquiescence of Mrs. Allen and in her interest. So she had notice, and fully and voluntarily accepted the jurisdiction and is in every way conclusively bound by it.

If the Missouri probate is valid it is because that was the lawful domicile of the testator, and if so, the City of Washington could not have been his domicile, for in this country a man can have but one domicile at a time.

McDaniels vs. King, 2 Cush., 472, 3;
Rounds on domicile, pp, 69 *et seq.*, 102.
Morse on Citizenship, pp. 99-100.

After a will has been regularly admitted to probate at the domicile, if there be personal estate in another jurisdiction, an exemplified copy of the will with the record of probate may be admitted to record in the jurisdiction where such property is, and letters testamentary or of administration, with the will annexed, may issue. But this is *ancilary*, and can only be done where the original will has been regularly and in form probated at the domicile.

We have no statute providing for the probate of foreign wills in this District, and in this we are governed by the common law.

It will scarcely be pretended that the admission of the will to record here was an original probate, or any probate at all, save the acceptance of the action of the Missouri Court, as the basis of granting letters of administration, with the will annexed, to Truesdell upon the *personalty* in this jurisdiction. *So that the validity of the probate here is absolutely dependent upon the validity of the probate in Missouri; and if that is irregular or void, this is necessarily so.*

If the domicile of Benjamin, at the time of his death, was in this District, then the Missouri Court had no jurisdiction of the probate of his will, and the will has never been probated at any place, and the heirs at law of Benjamin are entitled to all his personal estate, both here and in Missouri, and Mrs. Allen has no standing in this court, for she is a stranger to the estate.

Mr. Truesdell presented an exemplified copy of the will, with the Missouri record of probate to the Court here; and in his petition for probate and letters, which is sworn to, he says "*that deceased at the time of his death was domiciled in the town of Shelbina, County of Shelby, in the State of Missouri.* "That subsequently to the death of said deceased, his last will was duly forwarded to the said county of Shelby, *and in due course of proceedings* and law was *duly admitted to probate and record in the Probate Court for said county* on or about the 7th day of May, A. D., 1877, all of which will more fully appear by a duly certified copy of said will and the proof and probate thereof filed herewith as part of this petition, and marked Exhibit G. T. No. 1."

Vide p. 2.

And again on p. 6, he says:

"That for the due administration of the personal property and effects of the said deceased within the District of Columbia and the proper distribution thereof under the provisions of said will, it is necessary that the exemplified copy thereof, as aforesaid, be admitted to probate and record in this Honorable Court and recorded among the records thereof, and that letters testamentary or of administration of all the personal property of the said deceased within the District of Columbia be granted to your petitioner."

And he prays "that the exemplified copy of said will, as aforesaid, may be admitted to probate and record in this Honorable Court," and for letters, &c.

And without notice to the heirs of the testators or any other proof of the will than this, the court granted the prayer of the petitioner, admitted the will to probate, and ordered letters to issue.

The probate here was based solely upon the legality and regularity of the Missouri probate, which necessarily established the domicile of the testator in Missouri; and I submit that this court could not afterwards find the domicile to have been here, without first setting aside its order of probate and the grant of letters testamentary, which were based upon the assumption that the domicile was in Missouri.

It certainly will not be pretended that this court would or could have admitted the will to probate and granted letters testamentary upon the Missouri record if it had been shown to the court that the domicile was here and not in Missouri.

A will of personalty can, of course, only be contested at the place of the probate of the original will.

If, therefore, Missouri was not the domicile of the testatator, Mrs. Allen and Truesdell should have plead to the jurisdiction of the court, and if the issue had been found in favor of the plea, it would have defeated the action.

But they both answered the petition and neither of them ever hinted in their answers, that the court had not jurisdiction of the subject or the parties.

After the pleadings were filed and issue was made up for the jury, the case was twice tried, Mrs. Allen and Truesdell both appearing in person and by counsel, testifying themselves and offering much other testimony in support of the will, and the case was, of course, ably argued by my friend Mr. Worthington for Mrs. Allen and our Mr. Barnard for Truesdell, who both went out there for that purpose. But not one word of objection to the jurisdiction of the court from any of them was uttered.

Both trials resulted in a divided jury. The first time the jury stood six to six; the second time three in favor of the will to nine against it.

See answer of Geo. H. Benjamin, p. 28.

It seems to me that after all this it is too late for Mrs. Allen to deny that the domicile of Benjamin was in Missouri, or that that is not the proper *forum* for determining whether the paper upon which she relies for title is the will of John F. Benjamin or not.

After the second mistrial with nine jurors against the will, the ingenious counsel for Mrs. Allen discovered that the whole theory upon which the estate was being administered in Missouri and in this District was wrong, and that the domicile of Benjamin was here and not in Missouri.

And he actually came into the court that had admitted the will to probate on an exemplified copy from the Missouri court, and which action was based upon the fact that Missouri was the domicile of the testator, and asked the Court to decide that this was the domicile, thereby rendering its own proceedings irregular and voidable, if not absolutely void *ab initio.*

It required not only ingenuity, but *courage.*

But under some strange misapprehension, a learned and wise justice of the Court below made the order that this was the domicile of Benjamin when he died. I do not and cannot believe that Justice James was possessed of the facts in this record when he made that order. I particularly invite the attention of the Court to that order and the reason for it set out in the order itself.

See p. 186, rec.

This Court and all the parties in interest had up to the filing of the petition of Mrs. Allen on the 9th of January, 1880, conceded that the case pending in the Circuit Court of Missouri would determine whether Benjamin's will was valid or void, and that the fund here should be held intact, to be distributed either to the legatees or to the heirs at law, according as the Missouri Court should determine for or against the will.

On the 9th of January, 1879, Ennis filed exceptions to the account of Truesdell, and also a petition that Truesdell be ordered to pay over to him certain assets in his hands belonging to Benjamin's estate.

In his exceptions and petition, Ennis sets up that the will of Benjamin had never properly been admitted to probate here, but was transmitted to Missouri, where it was probated, and was afterwards admitted to probate here, on an exemplified copy from Missouri, as a foreign will, &c., and that Truesdell's letters were not lawfully issued.

See rec., p. 12 *et seq.*

Truesdell, on January 25th, 1879, filed his answer, in which he denies that he was not regularly and lawfully appointed executor. He denies that the will was not properly and legally probated in proper form, and that a duly certified copy was not properly filed and recorded in this Court. "On the contrary, he says that the domicil of said testator was in Missouri; and that said will was sent to Missouri and duly probated in the Probate Court in said State, in accordance with the advice of counsel, and that such was the proper and legal course to pursue in the premises."

See par. 5, ans. of Truesdell, p. 16.

On the 28th of January, 1879, Justice McArthur made an order overruling the exceptions and refusing to order Truesdell to pay over the assets to Ennis, but ordered Truesdell to invest the money in his hands in 4 per cent. U. S. bonds, and to hold the same for the benefit of said estate, reserving to Ennis the right to make further application for the delivery to him of the assets claimed.

Rec., p. 17.

On the 12th of December, 1879, Justice McArthur made a similar order.

See p. 19.

On the 8th of February, 1879, David B. Hasbrouk, on behalf of himself and other legatees of Mrs. Benjamin, filed a petition, setting out, among other things, that "said George H. Benjamin filed a bill in the Circuit Court of Shelby county, Missouri, making this petitioner and the other legatees of said Diana parties thereto, together with the legatees of the said John F. Benjamin and the executors of the said John F. Benjamin and the said Diana; that the purpose of such bill was to contest the will of the said Benjamin; that issues have been made up in the said suit and testimony taken, and the said suit is still pending and undetermined."

He then sets out that in his judgment it is the interest of himself and co-legatees that the funds, should remain as they were "*until the determination of the said litigation as to said will.*" And he prays that no order of distribution be made "until the determination of said suit contesting the said will;" &c. This petition was sworn to.

P. 18, rec.

On the 16th of January, 1880, Mr. Ennis filed in this Court a petition for a citation against Truesdell to compel him to file his second account.

In answer to the citation Truesdell, in giving his reasons for not filing his second account, says:

"First, upon the filing of his first account it appeared to the Court that there was litigation pending as to the validity of the will; and the Court directed, in approving his first account, that the money, or so much thereof in his hands as it should be practicable to invest, should be invested in Government bonds and held by him until the further order of the Court; that the litigation over the said will has not yet been determined;" "that he is ready to render an account at any time the Court shall direct, *but, under the circumstances, he is advised that it would be needless expense, as no distribution would be made until the litigation over the will was settled.*"

P. 24, rec.

Up to the filing of Mrs. Allen's petition no one had ever hinted that distribution might be made before the determination of the Missouri case. And well might Justice James refuse the order of distribution although, he had made the order changing the domicile.

Naturally we will want to know why one Justice should pass an order five days after another Justice of the same Court had refused it without any change in the circumstances of the case.

I presume the reasons that influenced Justice Hagner are found in the recitals of the decree itself, viz.:

"And that George Truesdell, executor for this District, has filed and stated his second and final account therein, which has been received and verified by the Register of Wills, and the account stated for distribution in accordance with the provisions of the will, *and the agreement of the legatees; and no objection or exception being made or taken thereto by any of the parties claiming under the said will, they all being here represented*, it is, this 5th day of March, 1880, ordered, adjudged, etc., that distribution be made, &c. [See Judge Hagner's decree, p. 187.]

The executor had filed his accounts for settlement of that part of the personal estate within this jurisdiction, and when the accounts were approved, after the domicile had been decreed to be here, distribution to the legatees under the will was the sequence. There was no contest here, and if this was the domicile there could lawfully be no contest anywhere else.

The fatal error was in the decree establishing the domicile here, when all the antecedent proceedings in the case from its inception had recognized Mo. as the domicile, and when the court was fully advised that there was pending there a preceding contest of the will, to which all the legatees, and the Washington executor, who was pressing the Court to make this order, were parties.

Counsel for the appellees in his brief in the Court below argued that the heirs had mistaken their remedy. They should have petitioned the Court here to set aside the probate. See 13 sub. ch. 2 of ch. 101 of the Maryland testamentary laws of 1798. See Dennis Tes. Law, D. C., p. 30.

But this remedy is wholly inapplicable. This provision is for a re-hearing as to a probate of a will of personality at the domicile. The heirs were already contesting the will at the domicile, and they could contest it nowhere else. Such a proceeding here would have been a recognition of this as the domicile. A petition to revoke the probate here could not have been maintained until the contest in Mo. had been determined against the will. Until then it was *prima facie* valid.

The heirs did not contest the will here, because they never had any opportunity or power to do so. The original will was sent by Truesdell, by the consent of Mrs. Allen, to Missouri for probate, because that was the domicile of the testator and the only place where a will of personality could be legally probated.

The heirs of Benjamin did not determine the domicile, and had no agency in sending the will to Missouri for probate, nor were they consulted about it.

They found the will regularly probated in Missouri—all the parties interested under the will conceding that to be the domicile of the testator, and the will itself designating Missouri as the home of testator in life, and the place of repose for his remains after death.

And under the provisions of the laws of Missouri they instituted a suit to determine the validity of the will. They made all the legatees and executors parties defendant, and Mrs. Allen and Mr. Truesdell entered their appearance in that suit, accepted the jurisdiction, answered, and twice tried the case without a final determination of it

Could the will have been contested here ?

The law of this District relating to the probate and contest of wills of personalty is found in chapter 2 of the Act of the Maryland Assembly of November, 1798, entitled "An Act for amending and reducing into system the laws and regulations concerning last wills and testaments, the duties of executors, administrators and guardians, and the rights of orphans and other representatives of deceased persons."

See Dennis' Prob. Law D. C., pp. 27 to 30.

The Court will see that it contains no provisions for contesting a will of personalty except where the original will is probated, or offered for probate.

But an insuperable objection to the contest of the will here was the fact that it was already being contested in the Circuit Court of Missouri, where the Court had possession of the will and jurisdiction of the parties and of the subject matter, and no one has to this day, so far as this record shows, denied the jurisdiction of that Court.

It will scarcely be claimed that a will of personalty may be lawfully contested in two separate jurisdictions, for as we have seen the legality of such a will must be determined by the law of the domicile, and a man can have but one domicile at the time of his death.

It has never been denied but that the contest in Missouri was lawful.

If it was so, that a will as to personalty might be contested in two different jurisdictions, it might be decided good in one and bad in the other.

The law tolerates no such absurdity.

But conceding that a will of personalty might be contested both here and in Missouri; there is no principle better settled in the law than that in all cases of concurrent jurisdiction the Court which first has possession of the subject must decide it; and that decision is final and conclusive.

Smith vs. McIver, 9 Wheat., 532;
Shelby vs Bacon *et al.*, 10 How., 56;
Peal vs. Phillips, 14 How., 368,
Williams vs. Benedict, 8 How., 107;
Taylor vs. Carroll, 20 How., 583;
Green's *adm'r* vs. Creighton, 23 How., 90;
Parsons vs. Lyman, 5 Blach., 172;
Memphis City vs. Dean, 8 Wall., 75.

It will be observed that this discussion relates to wills of personalty, for as to reality the rule is different, and the law of the *situs* of the property will determine the validity of the will. A will as to reality might therefore be good in one jurisdiction and bad in another. Suppose a testator devises real estate in the District of Columbia and also in Ohio, and there are but two subscribafter he came, when he ceased to give them any encouragement, and they all dropped him.

The testimony conclusively shows that in all these negotiations or interviews with brokers he proposed to *exchange* his home in Missouri for a home here, although abundantly able to buy for money any property which might have suited him. And when he found he could not make such exchange he abandoned all idea of getting a home here, and with it abandoned the idea of making this his home, and determined to return himself to Missouri and engage in business there.

While here he was in the habit of visiting his home in Missouri two or three times a year.

He bought and sent there a piano, and pictures. and other articles of furniture for his house in Missouri.

He had formed a co-partnership to practice law in Missouri, and when death surprised him he was on the eve of going *home* to stay.

The record in this case shows that everybody connected with this case conceded his domicile was in Missouri, and acted upon that assumption till January 9, 1878, when the petition for distribution was filed.

Upon the subject of domicile, I submit the following propositions of law and some of the numerous authorities sustaining them.

Every man must have a domicile, and there can be but one domicile for the purpose of distributing personal estate.

Gilman vs. Gilman, 52 Me., 174;

Abington vs. North Bridgwater, 23 Pick., 170, 177;

Sumerville vs. Lord Sumerville, 5 Ves., 750, 786;
Walke vs. Bank of Circleville, 15 O., 288, 299;
Crawford vs. Wilson, 4 Barb., 505, 518;
Thorndike vs. City of Boston, 1 Met., at 245.

A domicile once acquired, continues until it has been abandoned and a new one acquired.

Guier vs. O'Daniel, 1 Amer. Lead. cases, note at 739;
Harvard College vs. Gore, 5 Pick., 370;
Mitchell vs. United States, 21 Wall., 353;
Wharton's Conflict of Laws, 55;
Munroe vs. Douglas, 5 Maddox, at 405;
Gennison vs. Hopgood, 10 Pick., 79, 98.

CHANGE OF DOMICILE.

To constitute change of domicile two things must concur—First, residence in the new location. Second, the intention to remain there. There must be the animus to change the prior domicile for another, Until the new one is acquired the old one remains.

An intention alone to remove, not executed by an actual removal, does not make a change of domicile.

Mitchell vs. United States, 21 Wall., 353;
Hallowell vs. Sace, 5 Greenl'f, 143;
Green vs. Windham, 3 Me., 228;
Gorham vs. Springfield, 21 Me , 58;
State vs. Hallett, 8 Ala., 161;
Williams vs. Whiting *et al.*, 11 Mass., 432;
Bruce vs. Bruce, 2 Bosanquet & P., 229;
Waterbury vs. Newfield, 8 Greenl'f, 203.

A MAN'S DOMICILE IS WHERE HIS FAMILY RESIDES.

In considering domicile the place of residence of a man's wife and family is an important, if not controlling, factor.

Philemore's Law of Domicil, p. **117**, *et seq.;*

Says Story in Confl't of Laws, p. **41**, **7th** Ed.:

"The place where a man's family resides is generally to be deemed his domicile."

Again, same page, "If a married man has his family fixed in one place, and he does his business in another, the former is considered the place of his residence."

The same doctrine is strongly put in—

Round's Law of Domicile, pp. 78, 79, 80, 22, 19;
Forbes vs. Forbes, 1 Kay, 341;
Warrender vs. Warrender, 2 Clark & Finley, 536;
Green vs. Windham, 13 Me., at 226:

S. S. HENKLE,
Counsel for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1885.

The Heirs of John F. Benjamin, dec'd, *vs.* Charles L. Dubois, Administrator of Guy H. Schley (formerly Guy H. Allen).	No. 225.

MOTION OF GEORGE H. BENJAMIN TO BE SUBSTITUTED AS APPELLANT.

Now comes George H. Benjamin, and moves the court that his name be substituted in the appeal and in the entitling of this cause for that of "The Heirs of John F. Benjamin, dec'd."

By S. S. HENKLE,
His Counsel.

To A. S. Worthington, Esq.,
Counsel for the Appellee.

Please take notice that upon the hearing of this cause in the Supreme Court of the United States, I will submit the above motion to the court.

S. S. HENKLE.
Counsel for George H. Benjamin.

April 1, 1886.

I acknowledge service and consent that the motion may be heard at the hearing of the case.

A. S. WORTHINGTON,
Attorney for Charles L. Dubois,
Adm'r and for Geo. C. B. Rowan.

April 1, 1886.

It is stipulated that upon the hearing of the foregoing motion the court may assume the fact to be that prior to the decree of the 28th of February, 1880, by the Special Term of the Supreme Court of the District of Columbia. George H. Benjamin had purchased for nominal considerations, and held assignments, from Henry H. Benjamin, Louisa Wood, and Thurza Parks, named in the record, of all their alleged interests in the estate of John F. Benjamin, deceased. The counsel for the appellee, however, does not concede the right of the appellants to use the fact so admitted for any purpose.

S. S. HENKLE,
Counsel for Appellant.

A. S. WORTHINGTON,
Attorney for Charles L. Dubois,
Administrator, and for Geo. C. B. Rowan.

As to who the heirs of Benjamin were see caveat filed by heirs, p. 11, Rec ; see Rec. 21, order of Judge James, p. 29; bill of heirs to contest will, p. 175; answer of Mrs. Allen admitting heirs, p. 182.

At the foot of the final decree, p. 207 rec., it is said that the counsel for the heirs of John F. Benjamin, pray an appeal, which was allowed. and by the inadvertence of counsel for the appellant, he is not named.

It is totally immaterial whether the notice and allowance of appeal at the foot of the decree be right in form or not.

It is not essential that an appeal be taken in open court. It may be allowed as well out of court as in, and by a single justice as by the entire bench.

This appeal was allowed by the Chief Justice, when he approved the bond May 7, 1883.

Rail Road Co., v. Bradley's, 7 Wall. 575.
Sage v. Rail Road Co., 96 U. S., at 714–715.

In the latter case the Court say, that the approval of the bond is the allowance of an appeal, accompanied by the signing of the citation, when it is necessary. In that case the Court say, no question as to citation arises because the appellees appeared.

The appellees have appeared here, which brings our case precisely within the ruling of the Court in Sage v. R. R. Co.

The bond shows that the appeal was taken by George H. Benjamin alone. As a matter of fact he concentrated in himself the rights of all the heirs at law of John F. Benjamin. See stipulation.

He had the right to appeal on his own behalf.

This is a proceeding *in rem.* Strictly it has no parties.

"Any person in whose interest any order or decree of the Orphan's Court has a tendency to operate injuriously may appeal therefrom."

Cecil v. Cecil, 19 Md., 78, 79, 80.
Parker and wife, adm'rs of Edelin v. Gwynne, 4 Md., 423.
Singleton v. Singleton, 8 B. Monroe 340.
Jacob v. Pullman, 3 J. J. Marsh., 200.
Hunt et al v. Acre et al 28 Ala. at 593.
Mobile v Hodges, 12 Ala. 118
Glidden v. Andrews 10 Ala. 166.
Watson v. Spence, 20 Wend 260.
McArthur v. Allen, 3 Federal Rep Swayne Jus., 319 and cases cited.

Steamboat Burns, 9 Wall., 237:

The precise question was decided. The appeal was taken in the name of the steamboat. The Court held that this could not be done. Mr. Justice Miller, at p. 239, says: "When a claimant appears, he becomes a party to the proceedings, and may defend, *take an appeal, or writ of error,* or adopt any other proceeding that a party properly before the Court may be entitled to."

On p. 240, "An examination of the record in these cases shows that Adolph Hinecke did, in the inferior court, claim to be the owner, and defended the suit in the name of the steamboat. He likewise made affidavit that he was the owner, and gave bond to enable him to appeal to the Supreme Court of the State. But instead of taking it in his own name he took it in the name of the steamboat. We are of the opinion that by a liberal construction of the record, he may be so far regarded as the claimant and party to the record as to enable him to bring a writ of error to this Court in his own name, if so advised."

This case was decided before the Act of June 1, 1872, allowing amendments of writs of error.

The cases in which it has been held that all the defendants must join in a writ of error or appeal to this court, or there must be a severance to allow one to appeal, are cases in which the judgment or decree has been *joint.*

Hampton v. Rouse, 13 Wall. 187.
Masterson v. Herndon, 10 Wall. 416.

An appeal will not be dismissed on the ground that it was taken by one creditor if it brings up so much of the case, and such of the parties as are necessary for the determination of his rights.

Milner v. Meek, 95 U. S. 252.
See also, Cox v. U. S., 6 Pet., 172.

The record shows that from the inception of the proceeding and all the way through, and until the case was docketed in this court, it was entitled "In Re Estate of John F. Benjamin." It should have been docketed here in the name of Geo. H. Benjamin, appellant

It seems to me clear that under Sec. 1005, Rev. Stats.' allowing amendments of writs of errors, as construed by this court in Moore v. Simonds. 100 U. S., 145, this motion should prevail.

Appellee's Motion to Dismiss Appeal.

The appellee moves to dismiss the appeal, and assigns five grounds therefor.

1. "Because no person is named in said appeal as the erson taking said appeal."

This is fully met and answered in the motion to amend the appeal, and the fact that the appeal was in fact taken by George H. Henjamin, see appeal bond.

2. "Because only one person in the Court below—George H. Benjamin—contested the claims of these appellees, and he only of the persons claiming to be the heirs of John F. Benjamin was in the Supreme Court of the District of Columbia in General Term as a party to this case, when said Court made the decree appealed from."

The answer to this is found in the stipulation filed with the motion of George H. Benjamin to be substituted as the appellant. He had concentrated in himself the interests and rights of all the heirs of John F. Benjamin.

3. Because neither the decree of February 28th of the Special Term fixing the domicile, nor the order of April

16th overruling the motion to vacate the order of distribution, nor the decree of the General Term affirming the decree of Feb'y 28th were appealable decrees.

Was the decree of February 28th fixing the domicile appealable from the Special to the General Term?

It is sufficient answer to this question that the General Term held the appeal was well taken, and the appellee stands on that decree, and can't question it.

By the testamentary law of Maryland of 1878, in force in this District, an appeal may be taken from any order, judgment or decree of the Orphans' Court to the Chancery or General Court.

See Dennis Tes. L. D. C., 106.

And the General Term under the present system, takes the places of the Chancery and General Court of that day in Maryland.

But was the decree of General Term affirming that decree appealable to this Court? In other words was it a *final* decree?

What was the effect of that decree upon the rights of the heirs of Benjamin?

It fixes the domicile of Benjamin here instead of in Missouri.

From this it follows that the personal estate was to be distributed, and the legacies paid here.

That the personalty was to be administered under the law of the District of Columbia, and not of Missouri.

That the contest of the will pending in Missouri was illegal and inconsequential, because a will of personalty can only be contested at the domicile.

The record shows that the executor had settled the estate in this jurisdiction, had collected the assets, paid the debts, had filed his accounts for final settlement, and was ready, upon the approval of his accounts, to make distribution.

He was only restrained by the pendency of the contest in Missouri.

He, of course, could not distribute before this decree because up to this time the administration here had been treated as ancilary.

So soon as the court decided the domicile was here he asked that his accounts be passed and distribution be ordered.

Under the *peculiar* circumstances of the case the executor thougnt it best to ask for an order of distribution, but no order was necessary. Upon the passage of his accounts by the court the law made it is his duty to distribute the balance in his hands to those entitled.

The heirs of Benjamin had no longer any standing in court if that decree was to stand.

Hence Judge Hagner, without any notice to the heirs who had been stoutly contesting the case up to the decree of February 28th, five days after passed a decree directing the estate to be distributed to the legatees under the will, setting out in the decree that it was by consent of all persons interested under the will.

It is apparent on the face of the decree that the Justice did not consider the heirs of Benjamin as any longer interested, their rights having been concluded by the decree of February 28th, and they were dropped out of the case.

It will be observed that the parties to the contest as to domicile were the legatees Allen and Rowan as petitioners, and the heirs of Benjamin defending. The other defendants were all consenting legatees.

So soon as the decree of Feb'y 28 was passed that proceeding ended, and the legatees demanded distribution.

The executor, through his att'y, then applied to the Court for an order of final distribution. See affidavit of Truesdell, Rec., p. 202. Also affidavit of Job Barnard, his att'y, p. 200; and same affidavit on p. 201 explains how Judge Hagner came to make the order. It also shows that the att'y of the heirs had no notice. He was innocently confiding in his notice of appeal, which he afterwards took within the 30 days allowed by the rules of the Court, but long after the estate had been distributed. I think we may safely say that distribution took place on the day of the order—March 5.

So soon as Mr. Lowe, att'y for the heirs, found out that the order of March 5th had been passed, he served notice on Truesdell warning him not to pay over, as he intended perfecting his appeal, &c. See Rec., p. p 201-2.

Truesdell swears that he got this notice March 10th, and that he had already paid over.

The decree of the 28th February fixed the rights of the litigant parties as to that part of the estate in this jurisdiction. The estate was thenceforth treated as a testate estate.

The executor's accounts were already filed for settlement, and upon the passage of the accounts it became the duty of the executor to distribute to the legatees the funds remaining in his hands after payment of the debts.

Coward v. Worrell, 7 Gill and J., 475.

Says the court, pp. 479–80: "We think his duty is clear and well defined by a just construction of Sub.

Ch. 8, sec. 15, and Sub. Ch 11, Sec. 1, to make distribution among the representatives whenever the debts are paid."

Justice Hagner treated the decree of February 28th as a final decree, eliminating the heirs of Benjamin from the case.

The heirs had no remedy save that of appeal, and that they, or rather George H. Benjamin, pursued and perfected within the rules of the court.

No supersedeas bond was given, and none is required in appeals from the Orphans' Court to the General Term.

See Dennis' Tes. Law, D. C., sec. 18, p. 106.

The record, p. 194, shows that bond for appeal on the 26th of March was fixed at $100. No bond was given, for the reason that the money was distributed before the order was made. It could not, therefore, be a supersedeas, and in the case of Bryant v. Sanderson, 3d McArthur, 440, the court in general term decided that no appeal bond could be required where there was no supersedeas.

Was the decree as to domicile such a *final* decree as will sustain an appeal to this court?

In Thompson v. Dean, 7 Wall., at 345, the chief justice says:

> "In this case the decree directs the performance of a specific act, and requires that it be done forthwith. The effect when done is to invest the transferees with all the rights of ownership. It changes the property in the stock as absolutely and completely as could be done by execution on a decree for sale. It looks to no further modification or change of the decree. No such change or modification was possible after the term, except on rehearing, or by bill of review in the Circuit Court, or through an appeal to this court."

So far as the court below is concerned, the decree in the case determined the principal matter in controversy between the parties, and since the decree could not be changed except through a new and distinct proceeding, it determined that matter finally."

The learned counsel in the 4th ground of his motion to dismiss the appeal seems to think that appellants' remedy after the decree as to domicile was not by appeal but by a motion to vacate the probate, and tacitly concedes that otherwise he was remediless, the last clause from the opinion above cited disposes of this theory.

In the same case the court cites with approval the language of this court in Forgay v. Conrad, 6 How. 204, viz: "When the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold; or directs the defendant to pay a certain sum of money to the complainant, and complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorize an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for adjusting by further decree the accounts between the parties pursuant to the decree passed."

In Carter's Heirs v. Cutting and wife, 8 Cr 251, this court held that the order of the Orphans' Court of this District dismissing, without issuing a summons, a petition to revoke the probate of a will, was such a final decree as might be appealed to this court.

In Withenbury v. U. S., 5 Wall. 819, this court held that a decree in admiralty which fixes the rights of the parties, is a final decree and appealable

See French v. Shoemaker, 12 Wall. at 98.
Grant vs. Phœnix Ins. Co., 106 U. S. at 431;

St. Louis. Iron Mountain & Southern R. R. Co. vs. Southern Express Co., 108 U. S., 24;
Custis vs. Alexandria & Georgetown R. R. Co., 6 Cr., 233;
Green vs. Fisk, 103 U. S., 518.

The 4th ground urged to sustain the motion to dismiss the appeal is that the appellant should have moved to vacate the order of probate of the will of Benjamin and because he did not do that he can't sustain his appeal.

The heirs of Benjamin had a proceeding pending in Missouri to contest the will. It could not be contested at any other place than at the domicile. Until the will was adjudged bad it was *prima facie* good, and the heirs could make no valid objection to the admission of the will to record here until it was decided at the domicile not to be the will of the testator.

The 5th and last ground of the motion to dismiss it that the attorney for the heirs, upon the argument of the question of domicile before Justice James, read from the will the clause in which he describes himself as of Shelbina, Missouri.

Counsel seems to think that because Mr. Lowe read this clause from the will as tending to show the domicile that he thereby admitted that the will was not procured by fraud and undue influence of Mrs. Allen and her sister, I think I can safely rest this point with the court.

S. S. HENKLE,
Counsel for Appellant.

118-46

[illegible]
FILED
APR 9 1886
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1885.

No. 225.

The Heirs of JOHN F. BENJAMIN, deceased, Appellants,

vs.

CHARLES L. DU BOIS, Administrator of GUY H. SCHLEY, deceased, (formerly GUY H. ALLEN,) GEORGE C. B. ROWAN, and Others, Appellees.

Motion on behalf of CHARLES L. DU BOIS, Administrator, &c., and GEORGE C. B. ROWAN, (two of the Appellees,) to Dismiss Appeal.

ALSO

Brief in Support of that Motion, and Brief (on behalf of same Appellees) on the Merits of the Case.

A. S. WORTHINGTON,

Attorney for Charles L. Du Bois, Administrator, &c., and for George C. B. Rowan.

Thomas McGill & Co., Law Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

The Heirs of John F. Benjamin, Appellants,
vs.
Charles L. DuBois, Administrator of Guy H. Schley, Deceased (formerly Guy H. Allen), George C. B. Rowan, and Others.
No. 225.

Come now Charles L. DuBois, administrator of the estate of Guy H. Schley, deceased, (formerly Guy H. Allen), and George C. B. Rowan, two of the appellees in this case, and move the court to dismiss the appeal taken to this court in this case, for the following reasons:

1. Because no person is named in said appeal as the person taking said appeal.

2. Because only one person in the court below—George H. Benjamin—contested the claims of these appellees; and he only of the persons claiming to be the heirs of John F. Benjamin was in the Supreme Court of the District of Columbia in General Term as a party to this case when said court made the decree appealed from.

3. Because neither the decree of said court in special term for probate business dated February 28th, 1880, as to the domicile of John F. Benjamin, nor the order of said court in special term as aforesaid dated April 16th, 1880, refusing to vacate the order of distribution, nor the decree

of said court in General Term, was such a decree or order as entitled any person aggrieved thereby to prosecute an appeal to this court.

4. Because the persons claiming to be heirs of John F. Benjamin did not in the court below move to set aside or vacate the probate of the will of said John F. Benjamin, and therefore as heirs have no standing in court.

5. Because the counsel for said persons claiming to be heirs of said John F. Benjamin, at the hearing in the court below, in special term, read the will of John F. Benjamin, as probated, in evidence as a part of their proof on the question of the domicile of the said John F. Benjamin, and are thereby estopped from contesting the validity of said will, and so deprived themselves of any standing in court which theretofore they may have had.

A. S. Worthington,
Attorney for the Above-named Appellees.

To S. S. Henkle, Esq.:

Please take notice that I shall call up the above motion on Monday, the 5th day of April, 1886, or when the case is reached by the court, if it should be reached before that time.

A. S. Worthington,
Attorney for Charles L. DuBois,
Administrator of Guy H. Schley,
and for George C. B. Rowan.

Service of this notice acknowledged this 26th day of March, 1886.

S. S. Henkle,
Counsel for Appellants.

Filed April 5, 1886.

IN THE

Supreme Court of the United States.

October Term 1885.—No. 225.

THE HEIRS OF JOHN F. BENJAMIN, APPELLANTS,

vs.

CHARLES L. DuBOIS, ADMINISTRATOR OF GUY H. SCHLEY, DECEASED, (FORMERLY GUY H. ALLEN,) GEORGE C. B. ROWAN AND OTHERS.

Brief for Charles L. DuBois, Administrator, &c., and George C. B. Rowan.

I.

The Motion to Dismiss the Appeal.

The grounds upon which this motion is based will be considered in the order in which they are stated in the motion.

1. *Because no person is named in said appeal as the person taking said appeal.*

That an appeal taken or writ of error sued out otherwise than in the name or names of the person or persons for whose benefit it is sought to bring the case to this court, will be dismissed on motion, has been frequently decided by this tribunal.

The Heirs of Nicholas Wilson *v.* Ins. Co., 12 Pet., 140.

Deneale *v.* Stump's Executors, 8 Pet., 526.

Smyth *v.* Strader, 12 How., 327.

Miller *v.* McKenzie, 10 Wall., 582.

The Protector, 11 Wall., 82.

The case in 12 Peters is precisely in point.

Counsel for the heirs (so called) have given notice that they will move (under section 1005, R. S. U. S.) for leave to amend the appeal by inserting in lieu of the words "the heirs of John F. Benjamin," the name of George F. Benjamin, one of the alleged heirs. It is submitted that this amendment should not be allowed.

To consider the merits of this application for leave to amend, it is necessary to look at the whole record. It was for this reason that the motion to dismiss was not presented at an earlier date, the record not having been printed till very recently.

The will of John Forbes Benjamin appointed two executors—one, Joshua M. Ennis, of Missouri, so far as his property in Missouri was concerned; the other, George Truesdell, to wind up his business in the District of Columbia (3).

This will was admitted to probate in Missouri May 7th, 1877 (5), and in this District June 5th, 1877 (7). Both executors duly qualified and entered upon their respective duties. The will divided the property of the testator, except two minor legacies, between his wife Diana and Mrs. Guy H. Allen. His relatives are not referred to in it.

The Missouri executor, by his counsel, made some ineffectual efforts to have the probate here set aside, and to have delivered to him certain of the personal property which the District of Columbia executor held (7 to 11).

On the 16th of July, 1878 [probably], George H. Benjamin, Henry H. Benjamin, Louisa Wood (and her husband), and Thurza Parks (and her husband), by their attorney, R. P. Lowe, esq., filed a statement in the Probate Court here, in which they said that they were the heirs of the testator; that his domicile was in Missouri; that they had instituted proceedings in Missouri to have the will "declared inoperative;" and that they duly notified the Washington executor and his surety "not to pay the said legacies, * * * * leaving to the honorable Probate Court to determine to whom said money or legacies shall be paid" (11).

This paper asks for no action by the court; it appears never to have been called to the attention of the court; and there is no evidence that notice of its having been filed was given to any one. No step was taken in this jurisdiction by any of the alleged heirs in this case till they were brought in to answer the petition now to be referred to.

On the 9th of January, 1880, George C. B. Rowan and Guy H. Allen, two of the legatees, filed a petition averring that the debts of the estate had been paid, and that Truesdell, the Washington executor, had in his hands funds belonging to them under the will; that he refused to pay the legacies because of the above paper which had been filed by the alleged heirs, and that the domicile of the testator at the time of his death was in the District of Columbia. They prayed that Truesdell might be directed to pay the legacies (19).

On the same day the court ordered that this prayer should be granted on the 23d of February following, unless cause to the contrary should be then shown; provided that due notice should be given to Truesdell, to Ennis, the Missouri executor, to "R. P. Lowe, esq., solicitor for George H. Benjamin and others claiming to be heirs of said John F. Benjamin," and provided also that notice generally should be given by publication (21).

Truesdell answered admitting all the averments of the petition (24). John W. Miller, executor of Diana Benjamin, who had died pending these proceedings, appeared for the purpose of representing the Missouri parties in interest. His answer admitted all that was stated in the petition, except as to the domicile of John F. Benjamin, and that he did not deny (26).

Of the alleged heirs George H. Benjamin alone answered, and entitled his answer "The answer of George H. Benjamin, one of the legal heirs of John F. Benjamin" (27). He denied that the testator's domicile was in Washington, and asserted that it was in Missouri. He also set up that the validity of the will was being contested in Missouri, and claimed that as the courts of Missouri had "first obtained jurisdiction over this question, it would be against all the principles of State comity" for the court below to interfere (27 to 29).

The answers being thus in, the court, after argument by counsel for the petitioners, counsel for the three executors, Truesdell, Ennis, and Miller, and "by counsel for George H. Benjamin, Henry H. Benjamin, Louisa Wood, and Thurza Parks," referred the case to the Register of Wills to take depositions as to the domicile of John F. Benjamin (29).

Depositions were taken at Washington, Cumberland, Md., and in Missouri. Mr. Lowe and other counsel appeared at the taking of these depositions, sometimes as attorney "for Benjamin," sometimes "for George H. Benjamin," and sometimes "for George H. Benjamin and other heirs of John F. Benjamin" (30, 79, 107 to 109, 140, 141, 167).

On the 28th of February, 1880, the court, after argument by counsel for the petitioners and by counsel for "George H. Benjamin, Henry H. Benjamin, Louisa Wood, and Thurza Parks, heirs of decedent," made a decree to the effect that the domicile of the testator was the city of Washington, in the District of Columbia, and that the court below had original jurisdiction in the matter of his estate (186).

On the 5th of March, 1880, the same court (a different judge having in the meantime taken the court) made a decree approving the final account of the executor Truesdell, and directing him to distribute the estate (187).

Some days afterward (when, the record does not show) George H. Benjamin filed a motion to have the decree of 28th February, as to the domicile, amended by inserting the following:

> "And thereupon R. P. Lowe, counsel for George H. Benjamin, one of the heirs, gave notice of an appeal from the decision of the court in said case to the general term" (188).

At the same time, apparently, (again the record is at fault,) Mr. Lowe filed a motion to set aside the decree of distribution. This motion begins: "Now comes George H. Benjamin, *one of the heirs interested*," and ends, "***R. P.*** *Lowe, attorney for the heirs*," &c., (189.)

Still later the motion to amend the decree as to domicile was renewed by "George H. Benjamin, one of the legal heirs of the said John F. Benjamin, in behalf of himself and co-heirs, by their counsel, R. P. Lowe" (191). At the same time, apparently, Mr. Lowe filed an affidavit in support of his motion, in which he styles himself "Attorney for George H. Benjamin, one of the legal heirs of John F. Benjamin, deceased" (191).

On the 27th of March, 1880, George H. Benjamin alone took an appeal from the decree as to domicile to the court in general term (193). On the same day George H. Benjamin alone asked and obtained leave to withdraw the motion previously filed by him to have the decree of distribution set aside (194). And on the same day Mr. Lowe gave the undersigned notice that he would offer Thomas Wilson as surety on the appeal bond (for costs), and signed the notice "R. P. Lowe, att'y for the heirs of Benjamin," (194).

On the 6th of April, 1880, "George H. Benjamin, one of the heirs interested, by his counsel, R. P. Lowe," renewed the motion to vacate the decree of distribution (196). This motion was signed "R. P. Lowe, attorney for G. H. Benjamin" (197).

On the 16th of April, 1880, the case was heard on the motion to set aside the decree of distribution, as well as on the motion to have an appeal entered *nunc pro tunc* from the decree as to domicile. After argument by the "counsel for the heirs of said John F. Benjamin," an order was made overruling both motions (204). No appeal was taken from so much of this last order as overruled the motion for a *nunc pro tunc* entry. The other branch of the order was appealed from by "counsel for the heirs" of the decedent (204).

In the General Term counsel for the legatees moved the court to dismiss the appeal taken by George H. Benjamin from the decree as to domicile (204), and also to dismiss the appeal taken by "counsel for the heirs" from the order overruling the motion to set aside the order of distribution (205).

The case came on to be heard in the General Term on the appeal "taken by George H. Benjamin" from the decree as to domicile, and on the appeal "taken by counsel for the heirs of John F. Benjamin" from the order refusing to set aside the decree of distribution, as well as upon the motion to dismiss the appeals, and was argued by counsel for the legatees and by "counsel for appellants" (207). The court in General Term dismissed the appeal taken from the decree overruling the motion to vacate the decree of distribution, overruled the motion to dismiss the appeal of George H. Benjamin from the decree as to domicile, and affirmed that decree. An appeal was taken from this entire decree of the General Term to this court, by "counsel for said heirs of John F. Benjamin" (207). The court at the same time fixed the penalty of the appeal bond (not a supersedeas) at $500.

An appeal bond in the sum of $500 was accordingly filed by George H. Benjamin *alone* as principal (207). It recites, "*Whereas the above-named George H. Benjamin has prosecuted their appeal.*"

Thus it will be seen that throughout the record *four* persons appear claiming to be the heirs of John F. Benjamin, and when the appeal to this court is taken it is by "counsel for said heirs," without naming any of them. The statute invoked in aid of the application for an amendment (Sec. 1005 R. S. U. S.) says that this court may allow an amendment in a writ of error "when * * * the statement of the title of the action or parties thereto in the writ is defective, if the defect can be remedied by reference to the accompanying record, and in all other particulars of form."

Now, if the record here shows anything, it shows that George H. Benjamin, Henry H. Benjamin, Louisa Wood and Thurza Parks were all parties to the proceeding below, and that the defective appeal from the court below in General Term to this court was a defective appeal by them all. This being so, how is it possible for this court to say that "the accompanying record" shows that only George H. Benjamin appealed or intended to appeal. As well could each of the others claim that he or she only appealed. It is true that only George H. Benjamin appealed to the General Term from the decree as to domicile, but "counsel for the heirs aforesaid" took the other appeal to the General Term (204); and as the decree of the General Term disposes of both appeals, and the defective appeal to this court is from that decree as a whole, the other alleged heirs are in as good a position here as George H. Benjamin himself so far as the merits of the application to amend are concerned.

Again, what rights have any "heirs" in this litigation, which is a controversy not over lands but over legacies? The *distributees* of the testator might have an interest, but the distributees and the heirs are not the same. In many cases under the laws of this District the widow takes all the personal estate of her deceased husband, though the real estate goes to heirs, subject only to her dower. (See Maryland Statute of Descents; Kilty's Laws, 1786, chap. 45, sec. 2; and Statute of Distributions, 1798, chap. 101, sub-chap. 11.)

And further, how is this court to say who are the heirs of a deceased person until it is known where the domicile of the decedent was? (Harrison *v.* Nixon, 9 Peters, 483.) Here, that is the main question involved in the record; and can this court be required to pass upon the merits on an application for leave to amend the appeal?

It is true that the will purports to devise real estate in the District of Columbia. But under the laws of Maryland in force in this District, (as at common law), the probate of such a will has no effect so far as real estate is concerned. If the will be relied upon in an action of ejectment it must be proved just as though it had never been probated at all. (Warford *v.* Calvin, 14 Md., 532; Darby *v.* Mayer, 10 Wh., 465.) Indeed, if the will conveyed real estate only it would not have been admitted to probate. The "heirs" as such have no concern in the matter at all, and George H. Benjamin throughout his record claims as heir, and in no other capacity.

2. *Because only one person in the court below—George H. Benjamin—contested the claims of these appellees; and he only of the persons claiming to be the heirs of John F. Benjamin, was in the Supreme Court of the District of Columbia in General Term as a party to this case when said court made the decree appealed from.*

It has already been shown that Mr. Lowe, in the court below, in special term, appeared sometimes for George H. Benjamin alone, and at other times for "George H. Benjamin and the other heirs of John F. Benjamin." He seems to have had himself no clear idea as to whom he represented; and it could hardly be disputed that all four of the so-called heirs were before the court in special term. But however that may be, it is clear that no one but George H. Benjamin had any right to appeal to the general term.

There were two appeals attempted to be taken to the general term—one from the decree as to domicile and the other from the order overruling the motion to set aside the decree of distribution. The first was taken by George H. Benjamin alone (193.) The other appeal on its face purports to be by "counsel for the heirs;" but it is an appeal from an order overruling a motion made by George H. Benjamin alone. The original motion to vacate the order of distribution was made by George H. Benjamin only (189); it was withdrawn upon the motion of the "attorney for the said George H. Benjamin" (194); and when renewed it was by him alone (196).

So it is demonstrated that no one of the alleged heirs, except George H. Benjamin, undertook to assail the decree as to domicile or the decree of distribution, either by moving to set it aside or by appealing from it; and they therefore had no standing in the general term and can have none here.

For this reason, no doubt, the leave to amend is asked in the name of George H. Benjamin alone. But under familiar doctrine in this court one of the four could appeal alone only after due summons and severance as to the others.

3. *Because neither the decree of said court in special term for probate business, dated February* 28, 1880, *as to the domicile of John F. Benjamin, nor the order of said court in special*

term as aforesaid, dated April 16, 1880, refusing to vacate the order of distribution, nor the decree of said court in general term, was such a decree or order as entitled any person aggrieved thereby to prosecute an appeal to this court.

The decree as to domicil (186) was the decision merely of a question of the jurisdiction of the court. It was as far from being a final decree as any that can be imagined. (See on this point, Young *v.* Smith, 15 Pet., 287.) It is doubtful whether it was properly the subject of an appeal to the court in general term, since it can hardly be said to have involved "the merits of the action or proceeding." (Sec. 772, Rev. Stats., D. C.)

The other order in the special term appealed from was an order (204) overruling a motion to set aside a decree previously made. The motion to set aside was presented to the judge who had made the decree which it was sought to set aside. It was addressed to his discretion; his refusal to vacate the decree was not an appealable order; and the dismissal of this appeal by the court in general term was proper for this reason alone.

Brockett *v.* Brockett, 2 How., 238.
Wylie *v.* Coxe, 14 How., 1.
McMilken *v.* Perrin, 18 How., 507.
Connor *v.* Peugh's Lessee, 18 How., 394.
Warner *v.* Norton, 20 How., 448.
Cambuston *v.* U. S., 95 U. S., 285.

4. *Because the persons claiming to be heirs of John F. Benjamin did not in the court below move to set aside or vacate the probate of the will of said John F. Benjamin, and therefore, as heirs, have no standing in court.*

The will of John F. Benjamin having been admitted to probate, and it not appearing that he had any estate not disposed of by the will, his next of kin, whether claiming as heirs or as distributees ~~under the laws,~~ had no right to come into court save for the purpose of asking to have the probate set aside.

Compton *v.* Barnes, 4 Gill., 57.

Until assailed, the probate was conclusive evidence everywhere of the validity of the will.

1 Williams on Executors, Book VI, chap. 1.
3 Redfield on Wills, 63, n. 39.
Fouvergne *v.* New Orleans, 18 How., 470.
In re Broderick's Will, 21 Wall., 503.
Caulfield *v.* Sullivan, 85 N. Y., 153.

Especially was this the case in the court when it was probated. The "heirs" mistook their remedy. By section 13 of sub-chapter 2 of chapter 101 of the Maryland act of 1798 (Kilty's Laws) it is provided that where a will has been admitted to probate without contest, the court shall have power to set aside the probate upon the petition of "any person."

Section 14 of sub-chapter 3 of the same act authorizes the court in case of a contested will to appoint a collector to collect and preserve the goods of the deceased pending the contest. In this case the attorneys for the Missouri executor made just such an application (15), but it seems never to have been pressed; certainly no action was taken upon it by the court.

5. *Because the counsel for said persons claiming to be heirs of said John F. Benjamin at the hearing in the court below (in special term) read the will of John F. Benjamin in evidence as a part of their proof on the question of the domicile of the said John F. Benjamin, and are thereby estopped from contesting the validity of said will, and so deprived themselves of any standing in court which theretofore they may have had.*

In the will the testator describes himself as "of the town of Shelbina, county of Shelby, and State of Missouri."

This was competent evidence, tending to prove that his domicile was in Missouri. (Ennis *v.* Smith, 14 How., 400.) During the argument in the special term on the question of the domicile of the testator, Mr. Lowe, as counsel for "George H. Benjamin, Henry H. Benjamin, Louisa Wood, and Thurza Parks, heirs of the decedent," as the decree as to domicile recites, "read in evidence to the court from Liber A. W., No. 16, folio 237, of the records of this court the will of the said John F. Benjamin as it there stands admitted to probate, and stated to the court that he relied upon the declarations of the testator contained in said will as evidence upon the question of domicile." This recital in the decree is conclusive as to the facts recited. (Pacific R. R. *v.* Ketchum, 101 U. S., 289.) And these facts constitute a solemn affirmation by all the alleged heirs that the will of John F. Benjamin is a valid one, and that it was effectively admitted to probate in the court below. In doing this they put themselves out of court.

P. W. & B. R. R. Co. *v.* Howard, 13 How., 307, 335.
Bailey *v.* Bailey, 8 Wright, 274.
Ogden *v.* Rowley, 15 Ind., 56.
Scaggs *v.* B. & W. R. Co., 10 Md., 268, 280.
Sheffield *v.* Duchess, 1 Atk., 629.
Turner *v.* Davis, 48 Conn., 397.
2 Smith's L. Cas., 680.

II.

As to the Merits of the Appeal.

1. *The Question of Domicile.*

John F. Benjamin was born and reared in the State of New York. In early manhood he went to Missouri. The war found him domiciled in that State. He was an officer in the Federal army during the war, and subsequently, while those who had aided the rebellion were not allowed to vote in Missouri, he was a member of Congress from that State. He next engaged in business as a lawyer and banker at Shelbina, Shelby county, Missouri, where he had a dwelling-house called Vesper Place, in which he and his wife lived. He was childless. These facts are not disputed.

In 1870 or 1871, Benjamin adopted as his daughter Guy H. Welsh (127, 128, 103, 134), who afterwards became Guy H. Allen, and subsequently, by a second marriage, since this litigation began (206), Guy H. Schley. In 1873, Benjamin was seriously wounded in the course of an attempt made by one Hanley to kill him. Hanley had been a rebel, and the people of that part of Missouri, as Benjamin believed, sympathized with this attempted assassination. He concluded that his life was not safe there, and for that reason, and because he thought he was unfairly taxed, he resolved to leave Missouri and seek a home elsewhere. He accordingly closed up his law and banking business, and, in 1874, went to Washington city, intending to permanently reside there. So his friends and neighbors in Missouri testify. (Priest, 109; Collier, 111; Dunn, 113; Bigelow, 115.) Mr. C. M. King, who was Benjamin's law partner at the time, and who is now of counsel for his alleged heirs, and was examined in this case as a witness for his clients, testifies in substance to the same effect, and says that Benjamin declared that he would pull down his dwelling-house and remove the very bricks from Shelby county (153, 154, 163). He puts in evidence a letter from Benjamin to him dated March 17, 1875, in which the writer says: "*I shall not be in Shelbina until I come to move*" (154).

The testator in the fall of 1874 went into business as a banker in Washington in connection with Otis Bigelow, under a written agreement (52), fixing the time of the partnership at five years. He remained in Washington engaged in that business until March 8th, 1877, when he died. During this interval of two-and-a-half years the persons with whom he was most intimate in Washington were his partner, Mr. Bigelow; his confidential clerks, first G. T. Chase and next George C. B. Rowan; George Truesdell, a broker, who occupied the same office with Bigelow & Benjamin; Mrs. Bigelow, the wife of his partner; Mrs. Davis, the mother of Mrs. Bigelow; Guy H. Allen, his adopted daughter; her mother, Mrs. Welsh; and her sister, Mrs. Minerva O. Hammond. Each of these persons was examined as a witness on behalf of the legatees, and each of them testifies that at or about the time Benjamin came to Washington he stated that he had come to stay; and nearly all of them say that he gave as a reason that his life was not safe in Missouri, and that his taxes there were unreasonably high. (Bigelow, 51; Chase, 38; Rowan, 46; Truesdell, 29, 34; Mrs. Bigelow, 56; Mrs. Davis, 56; Mrs. Allen, 132; Mrs. Welsh, 127; Mrs. Hammond, 130.) He placed his dwelling-house, Vesper Place, in the hands of a number of real estate agents in Washington for sale or exchange, and endeavored through the same agents to get by such exchange, or to buy outright, a house, or a lot on which to build a house, in Washington for his permanent residence. (Sweet, 42; Addison, 57; Faehtz, 59; Smallwood, 63.) Each of these agents testifies that the authority to sell or exchange was never countermanded.

As late as July, 1876, at least, the testator was actively endeavoring to get rid of Vesper Place by exchanging it with a Mr. Duncan for a farm near Mexico, Missouri (121 to 127). He did not want the farm to live upon, but thought it more salable than Vesper Place. (Truesdell, 77, 78.)

To Hawkins Taylor, who had known him for many years, Benjamin said emphatically that he had come to Washington "to settle" here (61, 93).

It is thus proved that when Benjamin came to Washington, in 1874, he came with the intention of staying here permanently. There is no evidence on the other side on this point—not one word. And it is unnecessary to cite authorities to show that when he came to Washington with such intent and entered into business here Washington became the place of his domicile. Indeed, it would have been sufficient if we had shown that he came here to remain and carry on business for an indefinite period, with a "floating" intention to return to Missouri at some future time.

Story's Conflict of Laws, sec. 46.
Ringgold *v.* Bailey, 5 Md., 186–192.
Hindman's Appeal, 85 Pa., 466–469.
Whitney *v.* Sherborn, 12 Allen, 111.
Holmes *v.* Green, 7 Gray, 299.
The Indian Chief, 3 Rob., 18.
The President, 5 Rob., 279.
The Matchless, 1 Hag., 103.
The Venus, 8 Cranch, 279.

The appellants seek to derive comfort from the fact that Mrs. Benjamin remained in Missouri, and reliance is placed upon the well-known rule that the place where a man's family resides is generally his domicile. But the domicile of the wife follows that of the husband. The location of the family is important in questions of domicile only when the other evidence leaves it uncertain where the head of the family intends to live. Given as here, a clear case of a man going to a place other than that where his wife resides, intending there to stay permanently, (or without any intention of returning at any definite period), and intending that his wife shall follow him, and the domicile of the family as well as that of its head is transferred to his new place of residence.

Burnham *v.* Rangsly, 1 W. & M., 7.
McDaniel *v.* King, 5 Cush, 469, 475.
Parsons *v.* Bangor, 61 Me., 461.
Hanson *v.* Hanson, 111 Mass., 158.
Kashaw *v.* Kashaw, 3 Cal., 322.
Exchange Bank *v.* Cooper, 40 Mo., 169.

That this testator did intend his wife should follow him to Washington, the evidence leaves no doubt.

He told his intimate friend of many years, James Collier, that he was "about moving to Washington city and making it his home, and going into business there; that he was going on immediately, *and his wife would follow as soon as he could dispose of his property*" (112).

On June 16th, 1875, he wrote to Mrs. Allen:

> "*I could not leave Vesper to itself, therefore my widowerhood is protracted. I don't know how long. Mrs. B. and mate are there still.* * * * *I have not been able to find a house that suits me. I am therefore preparing to buy a site and build*" (101).

In August, 1876, he wrote to Jennie Welsh, one of Mrs. Allen's sisters: "*Mrs B. will probably remain in Missouri until next spring*" (121).

He frequently informed his friends here that his wife remained at Shelbina to take care of Vesper Place. Sometimes he said she would come to Washington when he got rid of Vesper Place—his "elephant" as he called it; at other times, that she would come whether he sold that house or not. (Chase, 39; Truesdell, 35; Mrs. Davis, 57, 87).

There is evidence in the record tending to show that in 1876 the testator had concluded to wind up his business in Washington and return to Missouri to live. But if he had such intention in 1876 it is manifest that that intention alone could not transfer his domicile back to Missouri. The intention without the act amounted to nothing.

Bruce *v.* Bruce, 2 B. & P., 229.
Monroe *v.* Douglas, 5 Madd., 379, 405.
Bangor *v.* Brewer, 47 Me., 97, 100.
Hallowell *v.* Saco, 5 Greenleaf, 143.
Ringgold *v.* Baily, 5 Md., 186, 192.
Hart *v.* Horn, 4 Kan., 232.
1 Am. L. Cas., 749, 750.

But it is denied that Benjamin really intended to return to Shelbina at all. He undoubtedly gave out that impression to some of his friends in Shelbina, for what reason I cannot imagine, but his acts belied his words. At the very time that he was giving out these impressions we have seen that he was negotiating with Duncan to exchange Vesper Place for a farm in Missouri (121 to 127.) He was no farmer, but he thought he could sell the farm. (Truesdell 77, 78.) He, was engaged in a business in Washington that required all his energies to manage, under a partnership agreement running till August, 1879. If that firm had dissolved by mutual consent it would have taken a long time to wind up its affairs, yet Benjamin had not only not asked for a dissolution, but not to Bigelow, nor to Truesdell, nor to Chase or Rowan, nor to Mrs. Bigelow, nor to Mrs. Davis, nor to Mrs. Allen or her family, nor to Hawkins Taylor did he ever suggest that he intended to go back to Missouri. (Bigelow, 53; Truesdell, 36; Rowan, 47; Chase, 40; Mrs. Bigelow, 56; Mrs. Davis, 57, 87; Mrs. Allen, 132; Mrs. Welsh, 127; Mrs. Hammond, 130; Taylor, 62.)

He appears to have never voted in Missouri after 1874; and the stock and bonds and promissory notes which he is shown to have owned were not listed in Missouri for taxation (117, 118).

It may be that in 1876, prior to the latter part of October, Benjamin's mind was wavering as to whether he should stay in Washington or go back to Missouri. But in October, Hanley was brought to trial—Hanley, the man who had tried to murder him, and had had so much to do with driving him from Missouri in the first place—and he was acquitted.

Benjamin returned at once to Washington, and we hear no more of his saying or writing that he was going back to Missouri. Immediately on his return to Washington he wrote (October 30) to Mrs. Hammond, giving a history of Hanley's crime and trial, and enclosing some poetry which he had written on the subject, (136 to 140). No one who reads that letter and its enclosure can believe that the writer intended to live in Missouri. The following Christmas he visited Mrs. Welsh at Cumberland, Md., and there recounted the history of the Hanley episode in his life, and announced that he would never live where he would have to see that man every day. (Mrs. Welsh, 128 ; Mrs. Hammond, 131.)

On the 15th of January, 1877, he purchased a lot in Washington (99). He bought it for the purpose of building on it a residence for himself. (131, 86, 96.)

More striking even than this is the fact that while his letters prior to the Hanley trial, written to his former law partner, Mr. King, are such as it was deemed proper to produce to show that the writer spoke of Shelbina as "home,"—[in his letters to Mrs. Allen he spoke of his residence in Washington as "home"—see letters of April 30th and May 5th, 1876, (104) and letters of December 24th, 1875, (101)]—not a single letter dated after that trial is produced. No letters of his written after that date are in the record, except those produced by the legatees. His last letters to his wife would have been important evidence as to his intention, but they are not produced. An attempt was made to prove that Mr. Hasbrouck, Mrs. Benjamin's brother, had access to them. See his testimony (65). A letter from Benjamin to his wife, dated June 11th, 1876, is in evidence (70) It came from George H. Benjamin (79). He was not examined as a witness, and we are therefore unable to say whether he had any others.

Rowan was with Benjamin in his last illness. (The legacy in his favor of $100 probably sprang from gratitude for this service). Benjamin's last letters to his wife were dictated to Rowan and written by him. Nothing was said in those about his going back to Missouri to live (84).

Indeed, the condition of Benjamin's business in Washington was such that to return to Missouri was out of the question. He had made no preparations to that end. (Truesdell, 72 to 74; Rowan, 79 to 83; Bigelow, 88 to 90). The books of the firm (88, 89) and the monthly memoranda (73, 74) made by the decedent himself—the latter explained by Rowan (79, 80)—demonstrate this.

Mr. Miller, Mrs. Benjamin's executor, did indeed testify that in a letter (which had been lost) written by Benjamin to him, "not more than three months prior to his death," Benjamin said he should return to Missouri, (142); but he subsequently found the letter, and it proved to have been written in July, 1876—three months before the Hanley trial (98).

The appellant's counsel also relies upon the description of the testator in the will as "of Shelbina, in the county of Shelby and State of Missouri." The question of the effect of such a description as evidence of domicile has frequently arisen. Manifestly, though it is of some weight in a doubtful case, it cannot of itself avail to change the domicile if that be known. If the testator has recently gone to the place where his will is made and where he dies, his describing himself in his will as of that place is entitled to considerable weight as showing that, being there, he proposed to make it his legal domicile. But when, as here, the place mentioned is a place different from the place where the will is made and the testator dies, the description is of very little importance, because, as we have just seen, a man cannot change his domicile without actually going into the jurisdiction to which he proposes to remove.

The description in the will is of no more consequence as evidence of domicile than the usual description in deeds of the residence of the parties thereto; and it would be absurd that to ascertain a man's domicile we are to look at the last deed he may have made. (In the deed from A. R. Shephere to Benjamin, dated less than two months before the latter's death, he is described as of the city of Washington. Record, 98.) A case bearing on this question arose in New York and was passed upon quite recently by this court. The laws of New York required that a mortgage of chattels to be good without change of possession should be recorded where the mortgagor, "if a resident of the State, shall reside." A firm doing business in the city of New York, but the members of which firm resided in other counties of the State, made such a mortgage and recorded it only in the county of New York. They described themselves in the deed as "of the city of New York." Nevertheless the mortgage was held void as to creditors because not recorded at the place of actual residence. (Stewart *v.* Platt, 101 U. S., 737.)

In the following cases the same principle was applied to descriptions in wills precisely like the case at bar.

Whicker *v.* Hume, 5 E. L. & E., 52.
Attorney-General *v.* Kent, 1 H. & C., 12.
In re Steer, 3 H. & N., 594.
Gilman *v.* Gilman, 52 Me., 165.
Smith *v.* Croon, 7 Fla., 81. 161

And see—

2 Williams on Ex., 1516, note *e*.
Crookenden *v.* Fuller, 1 Sw. & Tr., 441.

So of the fact that the testator wished to be buried in Missouri. A man may wish to be buried where he would not live. Benjamin might well have thought that, even though his life was not safe in Missouri, his enemies would not disturb his corpse. And ~~at~~ in any event a person's legal domicile is fixed by the locality in which he is established while alive, and has nothing to do with his migrations after he is dead. Plain as this may be, the courts have been required to pass on the question, and have so decided.

Hood's Estate, 21 Pa. St., 116.
Stanley *v.* Bernes, 3 Hag. Ec. R., 392.
White *v.* Brown, 1 Wall. Jr., 2~~8~~29.

2. *As to the effect of the proceedings in Missouri.*

The record does not inform this court just what the proceeding in Missouri is, nor what steps have been taken in it. If the heirs meant to rely upon what had been done in a Missouri court, they should have filed in the court below a properly authenticated transcript of the record from the Missouri court. Not having done so, it is submitted that it is impossible for this court to say that such a record, if produced, would have estopped the Washington legatees from averring in the District of Columbia that the domicile of the testator was in Washington, (Bank of U. S. *v.* Beverly, 1 How., 151.)

Instead of filing such a transcript, some person (who, does not appear; when, is unknown), without leave of the court, placed among the papers in this case three documents purporting to be copies of certain of the pleadings in the Missouri suit; the "petition of G. H. Benjamin *et al.*" (175), and the answers thereto of George Truesdell (179) and Guy H. Allen (181). A motion was made in the court below to strike these papers from the files (206), but it was never passed upon by the court. There is no pretence that Rowan ever appeared in the Missouri court.

But if these fragments of a record are evidence for any purpose, what do they show as to the issue in Missouri, so far as the domicile is concerned?

In the petition (175) it is averred that Benjamin at the time of his death was a *resident* of the town of Shelbina, Mo., but that he was then temporarily attending to business in Washington. Truesdell's answer passes over this allegation in silence (179). Mrs. Allen, in her answer, denies that Benjamin was merely temporarily attending to business in Washington, and avers that he was "regularly engaged in business" in Washington, and had entered into partnership with Otis Bigelow for an agreed period of time, which had not elapsed when he died (182).

Nowhere in these pleadings is the domicile of the decedent referred to. So far as the personal estate is concerned that was a jurisdictional question (Harrison *v.* Nixon, 9 Peters, 483); yet it was not averred in the petition nor in any way made an issue. If residence could be held to mean domicile, (which it cannot,) then the residence in Missouri was denied by Mrs. Allen, and not conceded by Truesdell. Now, what was done with that issue? What evidence was offered in relation to it? How has it been decided? Were these pleadings superseded by others? These questions cannot be answered, because the record is not here. If it were, it would show that the question of the domicile of Benjamin has not been considered at all in Missouri. And unless it is proved to have been raised and decided either by the formal admission of the parties or by the judgment of the court, the fact that it might have been decided is not material (Cromwell *v.* County of Sac, 94 U. S., 351; Davis *v.* Brown, 94 U. S., 423).

If the petition of the alleged heirs had averred that the decedent's domicile was in Missouri, and Mrs. Allen in her answer had admitted the fact, or if she had denied that averment and the court had heard evidence and decided the question in favor of the heirs, there would have been some ground for the contention that Mrs. Allen could not again raise that question in the District of Columbia; but even then the decision would have been conclusive only as to the courts in Missouri. In disposing of assets in this District our courts would have had to decide again the jurisdictional question of domicile (As~~b~~den *v.* Nixon, 4 How., 467). No doubt counsel for appellants will cite authorities to the effect that where the existence of a certain fact is necessary to give a court jurisdiction, and it, having the person or the subject-matter, or both, before it, has exercised jurisdiction, it will be conclusively presumed that it heard and determined such jurisdictional question, and that all other courts are bound by the decision. But the doctrine of this court is that even when the record produced shows that the foreign court expressly determined such jurisdictional fact, such finding is open to contradiction.

Thompson *v.* Whitman, 18 Wall., 457.
Knowles *v.* Gaslight Co., 19 Wall., 61.
Pennoyer *v.* Neff, 95 U. S., 730.

And see—

U. S. use of Wilson *v.* Walker, 109 U. S., 258.

But again, in Missouri a will is entitled to probate *as a will of real estate* (Wagner's Statutes of 1872, chapter 145, Sec. 13 & 14. vol. 2, page 1363). Benjamin died owning real estate in Missouri—Vesper Place. No probate here, no decision here as to the validity of the will, could in any way affect the will as a will of real estate in Missouri. *It was therefore necessary to have the will of Benjamin probated in Missouri whether his domicile was there or not.*

It will be said, however, that if the domicile of Benjamin was not in Missouri, the probate here of a copy of his will certified by the Missouri court was void.

Just what right this position, if it be correct, gives the appellant, is not clear. If there is no probate here—if the proceedings in this court are void from the beginning—there is no executor in this jurisdiction and no fund within the control of the court; and the appellant, if, as heir, he claims the assets of his deceased brother, must begin *de novo* by asking for the appointment of an administrator.

But the probate here was not a void proceeding. Courts of probate have frequently to dispense with the original will and admit a copy to probate in its place. The familiar instance of a lost or destroyed will need only be suggested. A will lost may be proved by parol evidence of its contents like other lost writings.

In re Happy's Will, 4 Bibb, 553.
Wilmot *v.* Talbot, 3 H. & McH., 2.
Smith *v.* Steele, 1 H. & McH., 419.
1 Williams on Executors, 378 *et seq.*

And if the will be sent beyond the jurisdiction of the courts of the domicile, and held adversely, it is manifest that the court of original jurisdiction is not to be thus shorn of its powers. Precisely such a case has occurred in the court below. The will and a codicil of James Alden, who died in this District, were sent to Charlestown, Massachusetts, on the supposition that the decedent was domiciled there. The will was admitted to probate in Massachusetts, but probate of the codicil was refused, as it had not been attested as required by the laws of that State. Both will and codicil were executed properly by the laws of this District. The codicil gave legacies amounting to about $20,000. The legatees under the codicil thereupon applied to the court below, sitting in probate, for relief. The presiding justice referred the case to the register to take depositions as to the domicile, and upon hearing the evidence made a decree that the decedent had his domicile here; that the Supreme Court of the District had original jurisdiction in the matter of his estate; and that an exemplified copy of the will and codicil should be admitted to probate here.

See 4 Proceedings Register of Wills, p. 196.

No appeal from this decree was taken, It will be seen that Mr. Justice James in the present case followed the Alden precedent throughout.

The Supreme Court of Massachusetts has decided that if a will of one who died domiciled in that State should be detained by the courts of another State, it would proceed on a copy, as in the case of a lost will.

Loring *v.* Oakey, 98 Mass., 269.

In Gilman *v.* Gilman, 52 Me., 165, the original will had been sent out of that State to New York where it was admitted to probate. (See *In re.* Gilman, 38 Barb., 368.) Afterwards, upon proof that the domicile was in Maine and that the original will was held by the surrogate in New

York, a copy was probated in Maine and this was held to be right.

In Caulfield *v.* Sullivan, 85 N. Y., 159, a man who had his domicile in New York died in Paris, leaving property both in France and in New York. The will was first probated in France, (apparently,) and an exemplified copy was admitted to probate in New York. It was contended that because the domicile was in New York the probate there based upon probate in France was void; that the surrogate had no jurisdiction. But the court say:

> "The testator was a citizen of this country, having a domicile at the time of his death in the city of New York, and he left property there. The surrogate, therefore, had jurisdiction to take proof of his will, and to admit it to probate, no matter when it was made, or when he died. If he admitted it to probate without sufficient proof, or without the proof or formalities which the law requires, it was a mere error in the exercise of his jurisdiction, and not judicial action without jurisdiction, and such error could be corrected only by application to the surrogate's court or appeal from its decree."

In Foulke *v.* Zimmerman, 14 Wall., 113, the will of a testator who was domiciled in New York was admitted to probate in that State after a contest, and the contestant appealed. Upon a transcript of the record in that case showing the contest, the probate, *and the appeal*, [as appears from the record in Foulke *v.* Zimmerman,] a copy of the will was admitted to probate in Louisiana, where the testator had real estate. The probate in New York was vacated on appeal in New York and issues sent to a jury. The probate in Louisiana was not at that time disturbed. The "universal legatee" under the will then sold the Louisiana real estate. The probate in Louisiana was next set aside. It was, however, held that the purchasers had a good title, because they bought in good faith, *before the probate in Louisiana was assailed.*

Indeed, in this country, where so many testators dispose by will of property situated in different States, it is obviously out of the question to require the production of the original will in each State.

In such cases the original is filed in one State, and the courts of the others proceed on copies. Of course it is proper and usual that the Probate Court of the place of domicile should have the original will; but if, from mistake or otherwise, the original paper is first filed in some other court, it would be against all reason and every analogy to hold that, on that account, the court of the domicile loses its great prerogative of deciding for the whole world whether the will is a valid disposition of personal property. Such a rule would place testators, courts, and legatees alike at the mercy of the executor.

As to the failure of the court below to examine the witnesses to the will before admitting it to probate, it is to be noted that the transcript of the record from Missouri which was presented with the petition for probate here showed that the witnesses had been examined (the will having been sent back to this District for that purpose) before a magistrate here, and that their testimony established all the facts necessary to entitle the will to be probated here. And if no such evidence had been submitted, and the court below had admitted the will to probate upon the oath of Truesdell alone, that would have been merely an irregularity, and the probate, as already shown, would have been good till revoked, and conclusive on all concerned.

The present case is more favorable to the appellees than any of those above cited in this, that the testator in this case, by his will, contemplated two separate and independent administrations. He appointed Ennis executor "so far as my property in the State of Missouri is concerned," and then proceeded to appoint George Truesdell "to wind up my business in the District of Columbia, so far as not to interfere with the rights of Otis Bigelow, my surviving partner" (3). He does not name Truesdell executor, but that is clearly what he meant; and that is sufficient. (1 Williams on Executors, 329, note *b;* 1 Red. on Wills, 62; Hartnett *v.* Wandell, 60 N. Y., 350.) And so the court below held when it admitted the will to probate here and issued to Truesdell letters testamentary (7). That decree has never been assailed by any one. When the alleged heirs filed their "statement of facts and notification," they term Truesdell "one of the executors of the last will and testament of John F. Benjamin, deceased," (11) and warn him as "executor aforesaid." There is no doubt that a testator has the right to appoint different executors for different localities.

3 Redfield on Wills, 53, 72.
1 Williams on Executors, Book III, chap. 3, p. 251.
Despard *v.* Churchill, 53 N. Y., 192.
Hartnett *v.* Wandell, 60 N. Y., 350.
Sherman *v.* Page, 85 N. Y., 123.
Hunter *v.* Bryson, 5 G. & J., 483.

3. *As to the Decree of Distribution.*

The will having been admitted to probate here, and the court having decreed that it had original jurisdiction in the matter of this estate, and creditors being all satisfied, distribution followed as a matter of course, unless there was a *supersedeas*, or some order of the court to the contrary.

The record shows no steps taken by the appellant looking to an appeal between the 28th of February, 1880, when the decree in question was made, and the 5th of March following, when the distribution was ordered. It is true that Mr. Lowe, on the 15th March, (188) and again on the 19th of that month (191), after the distribution was ordered and completed, filed a paper in which he claimed to have given "notice that he would appeal" in open court at the time the decision as to domicile was announced, and he moved the court to enter such a notice *nunc pro tunc*. But this motion was heard upon affidavits showing beyond question that no appeal had been taken (192, 193, 198, 200, 202, 203,) and the motion was overruled at the same time that the court refused to open up the order of distribution, the two decisions being embodied in one order—that dated April 16, 1880 (204). The appeal that was thereupon taken to the General Term was an appeal only from so much of the order of 16th April as refused to set aside the order of distribution (204).

Moreover, the alleged appeal of 28th February, 1880, had already been abandoned by the taking of an appeal in proper form from the decree as to domicile on the 27th of March following (193). This was three weeks after the distribution had been made (202), and of course a supersedeas then was not contemplated. For that reason the penalty of the appeal bond was fixed at $100 (194) simply to cover costs of the appeal. And as there was no supersedeas at any time, and no application in any form for a stay of proceedings, the executor was entitled to his order of distribution, having, as the decree of distribution recites, given notice to the world as provided by law.

Act of 1798, chap. 101, sub-ch. 13, sec. 12.

But we stand on broader ground than this. We maintain that *the law* required Truesdell to pay the legacies when he did, and that therefore the order of distribution "aggrieved" nobody.

By the Maryland act of 1798, chapter 101, sub-chapter 10, section 6, it is provided that when, by the first or other account of an executor or an administrator with the will annexed, it appears that the known creditors have been paid, "it shall be his duty to deliver up the estate in his hands to those entitled," and that he shall not be liable for any debt afterwards notified to him if he shall have advertised properly, unless assets shall afterwards come into his hands.

Sub-chapter 11 of the same act provides that when debts have been discharged the administrator "shall proceed to make distribution of the surplus as follows," and then enumerates the relatives entitled.

Finally, section 14 of sub-chapter 8 provides that it shall be the duty of an executor, within thirteen calendar months after the date of his letters, "to pay each claimant his just proportion of the money then in his hands. It shall likewise be his duty once in every term of six months after the first distribution to make distribution of the money which hath since come into his hands, until he shall have fully administered."

It is clear that the moment Truesdell received his letters as executor in this case the laws just cited became his rule of action. To save the rights of creditors, and for no other purpose, the law required him to advertise his appointment, and the prescribed time for the filing of claims of creditors having elapsed, and the creditors being paid, he was then bound to pay the legacies. (Conard *v.* Worrell, 7 G. & J., 475; Conner *v.* Ogle, 4 Md. Ch., 445, 451.) The proceedings in Missouri could not affect this duty. He was to look to the will and to our law for his instructions, and not to a foreign tribunal. *To the will* mainly, because, in the language of this court in Fenneck *v.* Chapman, 9 Pet., 475, "the will is the executor's law." This court said also in Hill *v.* Tucker, 13 How., 466: "The executor's interest in the testator's estate is derived from the will, and vests upon the latter's death, whatever may be the form which the law requires to be observed before an executor enters upon the discharge of his functions." So the Supreme Court of Pennsylvania held in Peeble's case, 15 S. & R., 39, that the authority of an executor is derived from the will; that the probate is conclusive evidence of the will, *and that therefore acts done by him as executor after probate and before revocation of probate are valid.*

The whole tenor of our testamentary law, as the extracts cited above sufficiently show, is to require executors, after taking out their letters, to pay legacies as soon as possible, saving only the rights of creditors. An executor under our law may pay legacies the day after he receives his letters if he choose to run the risk of not having enough assets left to pay the debts. (Evans *v.* Iglehart, 6 G. & J., 191.) Nobody but creditors can hold him to account for so doing. And this is the common law. "If the state of the testator's circumstances be such as to enable executors to discharge legacies at an earlier period, [*i. e.*, before debts are paid,] they have authority to do so." (2 Williams on Executors, 1387, and see notes.)

The court below, it will be observed, was never asked to direct the executor not to pay legacies pending the alleged contest in Missouri. And if it had been asked, it had no power to do so. It cannot grant an injunction. It is a court with powers limited to those expressly given it by the statute. (Act of 1798, chap. 101, sub-chap. 15, sec. 20.) It can take nothing by implication. How, then, could it restrain the executor from complying with the express mandate of the law, which said to him, "Having paid all debts, you will now proceed to pay legacies"? In Maryland, authority to do this substantially was given by the act of 1810, chapter 34, (see Hanna *v.* Munn, 3 Md., 233, and Dorsey's Testamentary Law, p. 80,) but there is no such provision in force in this District.

Thus at the close of this investigation, as at the outset, the fundamental error of the appellants in this whole proceeding is manifest. When they filed their "Statement of facts and notification" they should have averred that the domicile of the decedent was in Missouri, and that the validity of the will was being contested there, and have given the legatees and the executor, Truesdell, notice that they would move to have the probate here vacated and a collector appointed.

Act of 1798, chap. 101, sub-chap. 3, sec. 14.

The filing of that paper was of as little use as if it had been thrown in the fire. The executor, with his letters testamentary in his hand, was proceeding under the will and under the law to administer the estate, and no such paper could stay his hand.

The only error committed by the court below in special term was in not granting at once the order asked for by Mrs. Allen and Rowan in their original petition. Certainly the "heirs" were not in court, and the presiding justice did more than the law required of him when he called them in. For nearly three years they had stood by with full knowledge and seen the administration of the estate going regularly on in this District, and had asked for no relief. If they have been injured at all, that injury is the necessary result of their own mistakes; and those this court cannot undertake to correct.

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